

# *Town of North Topsail Beach*

Joann M. McDermon, Mayor  
Mike Benson, Mayor Pro Tem

Aldermen:  
Richard Grant  
Don Harte  
Connie Pletl  
Bob Swantek



Alice Derian, ICMA-CM  
Town Manager

Melinda Mier  
Town Clerk

## *Nature's Tranquil Beauty*

### **Planning Board**

Program for Public Information (PPI) Committee

### **Regular Meeting Draft Minutes**

Thursday, June 9, 2022, at 5:00 PM

2008 Loggerhead Court, North Topsail Beach NC 28460

Present: Hanna McCloud – Chair, Paul Dorazio – Vice Chair, Pat Stigall, Gunnar Mathews, Fred Fontana, Stu Harness, Susan Meyer, Deborah Hill – Planning Director, Kate Winzler – Clerk to the Planning Board.  
Absent: Scott Morse, Lisa Brown.

CALL TO ORDER Mrs. McCloud called the meeting to order at 5:04 p.m.

ADOPTION OF THE AGENDA Mr. Dorazio made a motion to adopt the agenda. Mr. Fontana seconded. The motion passed unanimously, 5-0.

APPROVAL OF MINUTES Mr. Matthews made a motion to approve the May 12, 2022 minutes. Mr. Dorazio seconded. The motion passed unanimously, 5-0.

PUBLIC COMMENT Mr. Charles Riggs of 502 New Bridge St, Jacksonville reserved his comments for Case R-22-01 Jackson.

### **NEW BUSINESS**

OATHS OF OFFICE Clerk Winzler swore in Fred Fontana (appointment to Planning Board), Susan Meyer (alternate to Planning Board), and Stu Harness (alternate to Planning Board).

ELECTION OF CHAIR Mr. Dorazio made a motion to elect Hanna McCloud as Chair to the Planning Board. Mr. Matthews seconded. The motion passed unanimously, 7-0.

ELECTION OF VICE CHAIR Mr. Dorazio made a motion to elect Paul Dorazio as Vice Chair to the Planning Board. Mr. Matthews seconded. The motion passed unanimously, 7-0.

### **RULES OF PROCEDURE**

Planning Director Hill requested that the Planning Board review the rules of procedure for review at the July Planning Board meeting for adoption in August. Mr. Fontana requested a revision to Rule 1, that the time of Regular Meetings be changed from 5:00 a.m. to 5:00 p.m. There was discussion.

### **CASE R-22-01 JACKSON**

Planning Director Hill introduced this case as the Planning Board's first conditional zoning case. Ms. Stigall requested further explanation. Ms. Hill explained that G.S. 160D replaced conditional use districts and changed them to conditional districts. When the North Topsail Beach zoning maps are updated, the

conditional use districts will all be changed to conditional districts. When an applicant makes a request for a rezoning to a particular zoning district with a condition, the applicant must agree to that condition in writing. If they do not agree to the condition in writing, that condition cannot be enforced. It is similar to granting a variance.

Planning Director Hill presented the staff report for Case R-22-01 to the Planning Board, a request to rezone 3621 Island Drive from R-20 to Conditional District R-15.

Charles Riggs of 502 New Bridge Street, Jacksonville spoke on behalf of applicants Mr. & Mrs. Jackson, who were in attendance. Mr. Riggs passed out full size maps for better viewing to the Planning Board, and explained the map in detail, including the width of the forty-five lots within the R-20 zone along Island Drive as varying between twenty-five feet in width to one hundred thirty-two feet. The Jackson's property is the widest property of all the properties within this R-20, with one hundred thirty-two point eight-nine feet. The R-20 zoning requires a seventy-five-foot width. Fifteen or thirty-three percent of the forty-five properties are non-compliant with the seventy-five-foot width. The Jacksons are requesting a conditional zoning from R-20 to R-15 with the conditions of single-family-only and abiding by the front and side setbacks of the R-20 zoning. They will subdivide the property and comply with the sixty-foot width of R-15. Mr. Riggs noted he feels as though this request is compatible with the CAMA Land Use Plan, with the zoning, with the R-20 zone. The single-family only condition ensures that the integrity of the neighborhood will not be diminished, and the width of the lots will exceed the average of the existing properties. Mr. Fontana asked what the width of the two new lots would be. Mr. Riggs replied the width has not been analyzed yet; it will be based on wetland and condition review, will not be any less than sixty feet, and will be compatible with the adjoining properties. Planning Director Hill asked if Mr. Riggs would be willing to have the wetland delineation completed prior to the Board of Alderman rezoning hearing. Mr. Riggs stated there was no way it could be completed in time, and the wetlands would dictate development.

**Mr. Matthews made a motion to approve. Mr. Fontana seconded the motion. The motion passed unanimously, 7-0.**

#### G. DEARBORN REQUEST TO MODIFY SUP-19-01

Planning Director Hill reviewed Mr. Gerald Dearborn's request to modify special use permit SUP-19-01, which allows the folks of Rogers Bay Campground to park their cars and boat trailers on the lot in front of Rogers Bay Campground. Mr. Dearborn was issued a notice of violation on 10/04/2021, and subsequently issued a citation on 4/08/2022 for parking a toy hauler on this lot. Ms. Hill received a complaint from William Lassiter for the campers, utility trailers, canoes, kayaks, scrap lumber, and rusty axles on Mr. Dearborn's lot, as well as habitation in the camper parked in the rental lot on holiday weekends. Ms. Hill stated that the parking permit for Mr. Dearborn's lot was for overflow parking, not an expansion of Rogers Bay, as it appears.

Mr. Dearborn addressed the Planning Board. He explained that the vehicle parked on his overflow lot is not a camper, but rather a toy hauler, and that no one is living in it. Ms. Hill asked if no one is living in it, why does it contain clothes in the closet, a bed, a stove, a kitchen sink, and a shower. Mr. Dearborn said that when his toys are stored in it, no one is living in it. He uses it for traveling. He stated that he does not rent out these spaces but uses them personally and lets two friends use them as well. Ms. McCloud asked if the toy hauler has windows, and Mr. Dearborn confirmed. Mr. Dearborn stated that the two structures next to the toy hauler are regular storage trailers on wheels. Ms. Stigall asked if she could find a toy hauler online. Mr. Dearborn said yes, they are a glorified closed-in trailer, not a camper. Mrs. McCloud stated that her friend bought one like Mr. Dearborn's because it was a navigable camper for a wheelchair. Mr. Dearborn confirmed that he only uses the toy hauler for traveling to motorcycle rallies. Mr. Dorazio asked if Mr. Dearborn has a camper in Rogers Bay. Mr. Dearborn confirmed that his camper is the first camper in the entry way. Ms. Hill stated that Mr. Dearborn's lot in Rogers Bay is the only one

with a covered car awning in Rogers Bay. He was issued a notice of violation for the car awning in 2011. Mr. Dearborn appealed to the Board of Adjustment; the Board of Adjustment denied the appeal; however, the car awning has not been removed. There was discussion. Planning Director Hill noted that SUP-19-01 was not granted due to pending litigation. Vice Chair Dorazio invited Mr. Charles Riggs to address the Planning Board. Mr. Riggs identified himself as the surveyor for the lawsuit. He advised that the lawsuit is regarding the positioning of an easement and is in settlement now and is nearing its conclusion.

The Planning Board took a recess at 5:46 p.m. The Planning Board reconvened at 5:57 p.m.

Chair McCloud read the special use permit description: "to develop private paid parking/overflow parking of passenger cars, trucks and boats on trailers for Rogers Bay Campground on the 4 tracts."

There was discussion. Planning Director Hill noted that the concern of the Board of Aldermen was not to allow an expansion of Rogers Bay. The special use permit request was to provide for overflow parking. How do you grant the request for overflow parking and prohibit the expansion of Rogers Bay through more travel trailers? Mr. Riggs asked if the special use permit condition pertained to the entire lot or just the portion of the easement. Ms. Hill stated it pertained to all of the property. Mr. Harness asked if there was a way to allow for parking and exclude the ability to live in the parked vehicles. Ms. Hill stated that you cannot set up an RV on a private lot within North Topsail Beach. An RV may only be set up in an exiting travel trailer park. There was discussion.

Chair McCloud asked Mr. Dearborn once the litigation is settled to return to the Planning Board and state a specific modification to SUP-19-01.

Mr. Matthews left the meeting at 6:11 p.m.

#### SWIMMING POOL TEXT AMENDMENT COMMENTS (MAYOR PRO TEM BENSON)

Planning Director Hill reviewed the Planning Board's historical review of the swimming pool text amendment. First, the Planning Board reviewed the survey of other towns. Then the Board made a recommendation to the Board of Aldermen based on the definition of dune. After which, Ms. Hill presented the Planning Board Chair's committee report to the Board of Aldermen. The Planning Board has been through the review process for this topic over several months. At the Board of Aldermen meeting, Mayor Pro Tem Benson asked the Planning Board to now review his "Questions and Concerns about text amendment From the Planning Board Report to BOA – May/June." Ms. Hill asked if the Board would like to review his concerns and respond. She asked if they would like to modify or adjust or explain the recommendation to the Board of Aldermen. Mr. Dorazio stated that after reading Mr. Benson's document, he wondered why the Planning Board recommended the text amendment. At the end of the document, Mr. Benson introduced the topic of beach accesses. Mr. Dorazio made several site visits and reconsidered the language of his motion indicating 'any dune.' He noted that lots throughout the Town are erratic, with oceanfront lots having varying setbacks from sixty feet to ninety feet from the first line of vegetation. Ms. Hill noted the setbacks will increase when the inlet hazard area is adopted. Mr. Dorazio suggested language explaining the prohibition of disturbance within setback areas from the first line of vegetation should be included in the pool ordinance. Ms. Hill suggested this is not a cookie cutter thing, not a one-size-fits-all. Ms. Stigall asked if the Board of Aldermen voted to remand this topic back to the Planning Board. Ms. Hill answered no. Ms. Stigall asked did the Board vote on the pool ordinance. Ms. Hill stated that it did not go to the Board of Aldermen yet; at the last Board of Aldermen meeting, there was not a consensus of the Board. Ms. Stigall asked after the Planning Board discusses this again, what is the outcome of all this activity? Ms. Hill explained that Mayor Pro Tem Benson asked the Planning Board to discuss, and he did give the Planning Board credit for giving this thoughtful consideration. Ms. Hill recommended staying the course in fixing the problem of the concise language as it pertains to swimming pools. Dune disturbance was brought up by Alderman Swantek as well. She noted that no one can make an ocean-front property owner pay for a beach cross over. Littoral rights

allow an ocean-front property owner to access the beach walking over their own dune. There was discussion. Ms. Meyer asked about the history of pools in North Topsail Beach. Ms. Hill said that when she first came to the Town, pools were allowed to the landward toe of the dune, and within the CAMA setback. Some people thought that pools had been permitted in the dune. After further investigation, over time and after sand renourishment projects and storms, the dune had migrated toward several already installed pools, giving the impression that the pools had been built into the dune. However, the swimming pool rules were changed to not be allowed in the CAMA setback. Property owners complained that their rentals were suffering because they could not install pools. The Board of Aldermen eventually voted in a split decision to allow pools in the CAMA setback again in 2017. Ms. Stigall asked if the goal was for the Town to have a regulation to go to if CAMA again approved a pool on top of a dune. Mr. Dorazio answered in the affirmative. Ms. Hill said if the Planning Board agrees that setting a pool on top of a dune is undesirable, then the Planning Board needs to construct language that allows the Planning Director to not allow pools placed within the dune system during the application review. Ms. Hill thought that had been accomplished by the Planning Board. There was discussion about engineered pools being anchored to not lift out of the ground or being frangible - breaking apart. Ms. Hill offered that the Planning Board could advise to the Board of Aldermen that the text amendment proceed and offer to help review the existing sand dune ordinance. Ms. McCloud noted that CAMA's restrictions used to exceed the Town's, and it is rare that the Town wants to be more restrictive than CAMA. Time and weather could change the perception of pools again at any time. Mr. Harness asked if the one pool that CAMA approved reflected a change in policy? Ms. Hill replied no. Mr. Riggs stated that in his experience from one end of Topsail Island to the other, everyone wants a pool. North Topsail Beach is unique in having less vegetation with sixty- and ninety-foot setbacks, making the building envelope smaller, having independently supported decks, pools, and beach accesses within the CAMA setbacks. The frontal dune is the first dune next to the ocean, at any elevation. If a dune is six feet higher than the base flood elevation, it is considered a primary dune. For example, if the base flood elevation is thirteen feet, and the dune is nineteen feet, that is considered a primary dune. North Topsail Beach really doesn't have any. The difference is that with a primary dune you may add sand or build a structure from the crest of that primary dune landward. You are not permitted to touch a frontal dune from the crest of the frontal dune to the landward toe of that frontal dune. CAMA looks at the primary dune and frontal dunes as the two dunes next to the ocean. If there is dip after those dunes and then another dune, CAMA does not regulate development in that dune. Ms. Hill noted that that was what happened in this case. Mr. Riggs stated that there's a good chance that was the case in this situation. The biggest key is defining dune in land disturbance. Ms. McCloud suggested agreeing with the CAMA language. Mr. Dorazio and Mr. Fontana agreed. Ms. Hill noted that if the Town has a higher standard than CAMA, the Town may be susceptible to litigation. There was discussion. Mr. Harness asked for confirmation that the situation of concern was where one swimming pool was built in what someone contended was a dune. It was located in a secondary dune, behind a frontal dune, and CAMA permitted it, so it's really a non-issue because CAMA approved it? Ms. Hill stated that it was a dune, but it was permitted by CAMA. Mr. Riggs offered that it appeared to be land disturbance that was permitted within the dune. Mr. Dorazio noted that the lot next to it will do the same thing, and Ms. Hill stated that she has already signed off on those permits. Ms. McCloud noted that this is the only location with secondary dunes in the Town, and Ms. Hill said it's the only primary dune that she is aware of. Mr. Riggs offered that the berm will eventually become the frontal dune, and then the dune that has been there will be the secondary dune. Ms. McCloud said unless the berm gets washed away. Mr. Fontana said he didn't see any need to change it. Ms. Stigall said someone needs to articulate that to the Board of Aldermen. Ms. Meyer offered that the Board of Aldermen needs to figure out what they want to do. Mr. Dorazio said they sent it back for the Planning Board to make another recommendation. Ms. McCloud corrected him noting it was Mr. Benson who sent it back to the Planning Board, shouldn't there have been a

consensus of the Board? Ms. Meyer agreed. Ms. McCloud asked Ms. Hill if Mayor Pro Tem Benson spoke for the Board? She'll be glad to answer his questions, but the Planning Board already answered the questions and he asked all the same questions again. Ms. Stigall said some of this didn't make sense to her. Mr. Fontana stated that Mr. Benson is asking about pools, but really is talking about dunes. Town Manager Derian clarified that the Board had asked for the Planning Board's report to come out of the consent agenda because it is a hot topic issue so that Deb could answer questions and to give the Board the opportunity to ask questions to go back to the Planning Board. Ms. Meyer noted that Mr. Benson spoke for a while, but she didn't recall other Board members asking questions. She asked about the swimming pool text amendment timeline, which Ms. Hill answered. Ms. Meyer stated that she thought when the Planning Board made a recommendation to the Board of Aldermen, the Board of Aldermen was supposed to take that recommendation and determine what action they want to take. But they did not do this in this case. They sent it back to the Planning Board for more information. Ms. Hill read from Mr. Benson's document: "Seems to me that several unanswered questions need to be resolved for the BOA before continuing with the preparation of an ordinance. What were the pros and cons of deciding that swimming pools should once again be banned in between the house and the frontal dune in NTB?" Ms. Hill noted that this is the antithesis of the readers' digest, condensed version, concise language, trying to clean up attempt. Ms. Stigall said that whole section is irrelevant to the fact that pools are a fact of life for builders and developers. People want them. Mr. Dorazio read "Do pools cause a nuisance due to loud parties?" what does that have to do with our review? Ms. Stigall said if it was forty years ago, those questions might be relevant. Ms. McCloud said the horse is out of the barn. Ms. Stigall said pools are here to stay. Ms. McCloud said we're not going to ban them. Mr. Fontana said it seems it would be hard to go against CAMA. Mr. Dorazio said that the average swimming pool adds one hundred thousand dollars of value to the house. Mr. Fontana also noted that having a pool adds to the rental income. There was further discussion of Mr. Benson's document and questions, including the removal of the mangrove section as it is not applicable to North Topsail Beach. Ms. Meyer read, "Making the 'pool rules' more restrictive in NTB from the CRC guidelines will only cause confusion and possible legal expenses to enforce any stricter rule." Mr. Fontana and Ms. Stigall agreed. Mr. Fontana asked what does Mr. Benson really want? Does he want us to contradict CAMA because of the one pool? Ms. Meyer said she thinks they wanted the Planning Board to think about how it affects everything, and if there was some reason to make it easier or harder to build a pool. Ms. Derian offered that Mr. Benson wanted the Planning Board to weigh the pros and cons and ultimately make a recommendation based on what the Planning Board is recommending. Mr. Dorazio asked to remove the phrase "any dune" from the original recommendation. Ms. McCloud asked Ms. Hill for the original text. Mr. Dorazio said the Planning Board's original recommendation to the Board of Aldermen was to remain consistent with CAMA's regulations. Mr. Harness offered that if CAMA rules change, the Town would not be constrained by them. Ms. McCloud said unless we all decide that we don't want pools in North Topsail Beach, there is going to be pools in North Topsail Beach. The weather may affect the installed pools. Ms. Hill read the original recommended text amendment. Ms. McCloud asked for the language of the original ordinance. Ms. Hill read the existing ordinance, "Swimming pools may be permitted consistent with CAMA's general use standards for Ocean Hazard Area of Environmental Concern (AEC) pursuant to G.S. 15A NCAC 07H.0309." Ms. McCloud said let's go back to that. Mr. Fontana said that's what we want it to say. Ms. Stigall asked if there should be any exemplary language added, such as secondary dune definition? The issue with all of this is the way that pool looked, being stuck in a secondary dune. Ms. Hill noted that the original text does not include any dune language. Ms. McCloud said the bottom line is that the Planning Board has a direction to guide the permitting, and the permitting says we can do what CAMA says, and if we start giving explanations, those explanations could change, and any time we have a change, we get our feet back into it. Ms. Stigall said someone must explain that to the Board of Aldermen. Ms. McCloud offered Planning Director Hill.

Mr. Fontana made a motion that we amend the proposed text amendment to the original text language of section 4.03.09, that there are no changes to the most recently adopted text. Mrs. Meyer seconded. The motion passed unanimously, 6-0.

DISCUSSION: none.

ADJOURNMENT Mr. Dorazio made a motion to adjourn. Mrs. Stigall seconded. Motion passed unanimously, 6-0.

The Planning Board meeting adjourned at 7:11 p.m.

APPROVED

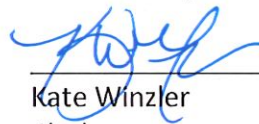
This 11th day of August 2022



Hanna McCloud  
Chair

CERTIFIED

This 11th day of August 2022



Kate Winzler  
Clerk