

# *Town of North Topsail Beach*



Daniel Tuman, Mayor  
Mike Yawn, Mayor Pro Tem  
Aldermen:  
Richard Farley  
Richard Macartney  
Robert Swantek  
Deborah Lanci

Breck H. Smith  
Interim Town Manager

Carin Z. Faulkner, MPA  
Town Clerk

## **TOWN OF NORTH TOPSAIL BEACH PLANNING BOARD MINUTES DECEMBER 10, 2009 6:30 P.M.**

**PRESENT:** SUE TUMAN-CHAIRMAN, PAUL DORAZIO-VICE CHAIRMAN, GARY ROWLAND, SUZANNE GRAY, GERALD RIGGLEMAN, GUNNAR MATTHEWS, DON HARTE-ALTERNATE, DEBORAH HILL-PLANNING & ZONING ADMINISTRATOR, RYAN McALISTER-PLANNER, TERRIE WOODLE- PERMIT TECH/RECORDING SECRETARY

**NOT PRESENT:** HANNA McCLOUD

1. **CALL TO ORDER:** Mrs. Tuman called the meeting to order at 6:38 p.m. in the North Topsail Beach meeting room.
  - A. Acceptance of resignation of Alderman Deborah Lanci
  - B. Recognition of Suzanne Gray as a regular member
  - C. Installation of Don Harte as alternate member
2. **ADOPTION OF AGENDA:** Mr. Rowland made a motion to approve the Agenda. Mrs. Gray seconded the motion, motion passed unanimously.
3. **APPROVAL OF MINUTES:** Mr. Rowland made a motion to approve the minutes. Mr. Dorazio seconded the motion, motion passed unanimously.
4. **PUBLIC COMMENT:** Mr. Denittis wished the Planning Board members and Staff a Merry Christmas.
5. **OLD BUSINESS:** None.
6. **NEW BUSINESS:**
  - A. **Public Hearing- CASE # R-09-02:**

### **BACKGROUND:**

Michael R. & Alice D. Remedios are submitting a rezoning application and requesting that their 7,306 square foot lot- identified as 354 Sea Shore Drive (Tax Id # 805-3) and further described by the Boundary Survey for Lawrence M. Spears & Wife Judith B. Spears by Charles F. Riggs dated 13 February 1995- be rezoned from Business District B-1 to Multifamily Residential R-5. Notice of a Public Hearing has been made as required by State statutes and NTB Town Code.

The zoning of the property has remained unchanged from B-1, as indicated by the West Onslow Beach Official Zoning Map effective January 15, 1982, the 1992 and current 2007 Zoning Map for

North Topsail Beach. However, permits and a certificate of occupancy for a single family dwelling were issued in 1995.

**ANALYSIS OF THE APPLICATION:**

The following analysis of this application is provided in response to the policy guidelines stipulated in North Topsail Beach Town Code Section 7-93:

- A. The proposal will place all property similarly situated in the area in the same category, or in appropriate complementary categories.

**Staff Comment:** The surrounding properties are zoned R-5, R-10 and B-1.

**Statement by Applicant:** This house was built in 1994. I purchased in 1995. It was ALWAYS the assumption that this was residential- the first that I have heard otherwise was last week. Except for the campground, this neighborhood is entirely residential, mine is the only home (lot) zoned B-1. Impact is significant for the refinance and resale.

**Arguments in Support:** An email was received from Mr. Larry Spears, former owner of 354 Sea Shore Drive.

**Arguments in Opposition:** None received.

- B. 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.

**Staff Comment:** The property consists of a residential single family dwelling, which was permitted by Town staff in 1995. Residential use is consistent with the surrounding residential structures.

**Statement by Applicant:** My entire street is residential- to allow my lot to be zoned business would be a detriment to the rest of the neighborhood.

**Arguments in Support:** None received.

**Arguments in Opposition:** None received.

- C. 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.)

**Staff Comment:** The single family structures is a conforming use for R-5 and is considered a “non” conforming use as currently zoned, B-1. Zoning below R-5 would not meet district requirements of Section 7-129 and would create a dimensional non-conformity. All permitted uses are listed in North Topsail Beach Town Code section 7-128; however, the existing use is single family residential, permitted by Town staff in 1995.

**Statement by Applicant:** Residential should be the only permitted use of this property given that the whole street is single family homes.

**Arguments in Support:** None received.

**Arguments in Opposition:** None received.

- D. 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.

**Staff Comment:** The character of the neighborhood will not be adversely affected as the change in zoning is consistent with adjacent zoning and use.

**Statement by Applicant:** This change would simply ensure that character of the neighborhood would NOT materially change.

**Arguments in Support:** None received.

**Arguments in Opposition:** None received.

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

**Staff Comment:** The proposed change is inconsistent with the 2009 NTB CAMA LUP. According to Policy number 9, the Town supports quality future development reflecting the spectrum of housing needs ranging from single-family homes to multi-family development in the form of duplex and triplex housing. Although this policy reflects support for medium density development, the Town will not rezone any property to a density less than R-10.

However, the recommendation to break precedence is based on extenuating circumstances: 1) the non-conforming use was not created by the owner, but has caused a hardship in the owner's ability to refinance a lot of record and a non-conforming use permitted by Town staff in 1995; 2) Zoning to R-5 is in accord with sound planning principles as the lot meets the district requirements of Section 7-129 and zoning to any other district in compliance with the 2009 NTB CAMA LUP would create a dimensional non-conformity.

**Arguments in Support:** None received.

**Arguments in Opposition:** None received

#### **RECOMMENDATIONS:**

That the Planning Board recommends that the Board of Aldermen approve Ordinance R-09-02, rezoning Tax Parcel ID # 805-3 from B-1 to R-5 and that Ordinance R-09-02 includes a Statement of Consistency justifying the decision to accommodate the property owner due to the extenuating circumstances, as specified.

Mr. Rowland asked what property is R-5 in that area. Mr. McAlister stated to the North of this property is Stump Sound Village which is all R-5. To the East is B-1 and to the South there are some instances where R-5 zoning exists between lots. There is a multitude of zoning districts surrounding this lot.

Ms. Hill spoke with Mr. Holland with Holland and Associates and Mr. Christenbury- District Planner for NC Division of Coastal Management, both of them agreed that she recommend the property be rezoned R-5 and the Land Use Plan would not have to be amended as long as there was a statement of consistency in the resolution ultimately adopted by the Board of Aldermen.

**Mr. Rowland made a motion to open the Public Hearing. Mr. Riggleman seconded the motion, motion passed unanimously.**

Mr. Remedios owner of 354 Sea Shore Drive came forward to speak. He thanked the Planning Board for their consideration. He stated if it remained B-1 it will present a significant problem, the underwriters will not touch it. Every assumption was made for 13 years that this is residential and all the loans and appraisals were done as residential; to leave it as B-1 would be a problem.

Mr. Rowland asked Mr. Remedios if it made a difference to him if it were R-5 or R-10. Mr. Remedios stated that R-5 makes more sense because if there were a problem it would no longer be non-conforming, it would be a conforming lot and he would not have to come back with a non-conforming lot as R-10.

Mr. Denittis stated that it should be zoned R-5 so it will be conforming.

**Mr. Riggleman made a motion to close the Public Hearing. Mr. Rowland seconded the motion, motion passed unanimously.**

**Mr. Riggleman made a motion to recommend that the Board of Aldermen approve Ordinance R-02-09 rezoning Tax Parcel ID # 805-3 from B-1 to R-5 and that Ordinance R-09-02 include a Statement of consistency justifying the decision to accommodate the property owner due to the extenuating circumstance that does meet sound planning principles. Mr. Dorazio seconded the motion.**

**DISCUSSION:** Mr. Rowland asked Ms. Hill if there is a good reason to modify the Land Use Plan. Ms. Hill stated with just one case, no. In the future if there are other instances that come up and the Planning Board wants to address them the same with the Zoning Ordinance they might want to keep this in mind.

**Motion: Passed 6-1 with Mr. Rowland voting against because the Planning Board is disregarding the CAMA Land Use Plan.**

## **7. PLANNING BOARD & STAFF DISCUSSION:**

- A. **Conditional Use Districts:** Ms. Hill stated after a few phone calls and e-mails the general consensus is that the Planners like it and it does streamline the process. It legitimizes the conditions that might be placed on a piece of property for rezoning.
- B. **Zoning Map:** Ms. Hill stated that she sent out an e-mail discussing the wetland delineation to have a justification for the line. If the Town adjusts the zoning boundary using the delineation as justification that would be grounds for other property owners to come in and request the same thing.


Ms. Hill suggested having Onslow County GIS make the corrections that need to be made based on what the map should have been including Ocean Ridge and the Sea Oaks Property. The Planning Board came to a consensus to review the Zoning Map at their January meeting and have a Public Hearing in February.

- C. **Undersized Lots of Record: Non Conforming Lot Analysis by Eastern Carolina Council:** Ms. Hill met with Rob Wills and they hand corrected the non-conforming lots on the map. He went back to digitize those corrections; he hopes to be finished with that by Friday December 11, 2009. Ms. Hill stated that this will hopefully be ready for the January Planning Board meeting.
- D. **Unified Development Ordinance (UDO):** Ms. Hill stated that she would like to have the UDO ready by February.

8. **PUBLIC COMMENT:** No one from the Public came forward to speak.

9. **ADJOURNMENT:** Mr. Rowland made a motion to adjourn. Mr. Matthews seconded the motion, motion passed unanimously.

The Planning Board meeting adjourned at 8:00 p.m. December 10, 2009. Minutes prepared by Terrie Woodle- Permit Tech/Recording Secretary.

  
 Sue Tuman-Chairman

Date: 1/14/10

  
 Terrie Woodle-Permit Tech  
 Recording Secretary

Date: 1/14/10