



## Dare County Planning Board Meeting

Dare County Board of Commissioners Meeting Room  
954 Marshall C. Collins Drive  
Manteo, NC 27954

March 5, 2024

- I. Call to order 6:00PM
- II. Roll call  
John DeBoy, Chairman  
Beth Midgett  
David Overton  
Terry Gore, II  
Buddy Shelton  
David Hines  
Eddie Twyne
- III. Approval of minutes for the February 6, 2024 meeting
- IV. Public Comment
- V. Old Business
- VI. New Business
  - Preliminary Review - Three lot subdivision in Rodanthe - Parcel 012552000, Jonna O. Midgette Subdivision
  - Special Use Permit Application 01-2024; Construction of eight-(8), three bedroom, Single Family Dwellings; Parcel 012572001 / 23244 Midgetts Mobile Court, Rodanthe / Submitted by Dereck Henck
  - Zoning Text Amendment to the MP-C Section 22-17.2 for Shared Space Occupancy Dwelling and Section 22.2 Definitions / 6325 N Croatan Hwy., Martin's Point Commercial Lots, Parcel # 021865004. Submitted by Patricia Pledger
- VII. Other Business
- VIII. Adjournment

## MINUTES OF THE DARE COUNTY PLANNING BOARD MEETING

The Dare County Planning Board held their regularly scheduled meeting on Tuesday, February 6, 2024. This meeting was held in the Dare County Board of Commissioners meeting room located at the Dare County Administrative Building, 954 Marshall C. Collins Drive, Manteo, NC.

**CALL TO ORDER** 6:02 pm

**MEMBERS PRESENT** John DeBoy, Chairman  
Terry Gore II  
David Hines  
David Overton

**MEMBERS ABSENT** Beth Midgett  
Buddy Shelton  
Eddie Twyne

### APPROVAL OF MINUTES

There being no corrections, additions or deletions to the minutes of the February 6, 2024 meeting of the Dare County Planning Board. Terry Gore made a motion to approve the minutes as submitted. David Overton seconded this motion.

Vote: Ayes – Unanimous

### PUBLIC COMMENT

At 6:03 p.m., Chairman DeBoy outlined the procedure for making Public Comments. There were no public comments made at this meeting.

*Public Comment Closed at 6:03.*

### OLD BUSINESS

-None-

### NEW BUSINESS

#### **Amendment to SUP 6-2020 Outer Banks Dare Challenge - Residential Dormitory; Wanchese Parcel #016520005**

Ervin Bateman was present as a representative for Dare Challenge, in the absence of the engineers and builders.

Mr. Gillam, Planning Director, began by informing us that this is an Amendment to SUP 6-2020. This is due to an error in the original plans, which cited the two dormitories as single-story structures, instead of the intended two-story structures that were originally approved in the SUP and the Dare County Zoning Ordinance. Mr. Gillam stated that any increase in the square footage of a building would generate the need for another review with the Planning Board, as



well as the Board of Commissioners, to reflect the changes to the site plan. Mr. Gillam further detailed that the multi-purpose building has had a reduction in the footprint from 9,920 sq. ft., down to 8,400 sq. ft., however, the staff housing building has an increase in square footage from 1,768 sq. ft. to 1,904 sq. ft. This increase in lot coverage is still compliant with the requirements of the Highway 345 Zoning District. An amended draft document to SUP 6-2020 was provided for review. All changes to the site plan have been addressed and all other conditions of the original SUP will remain in effect.

Terry Gore made a motion to advance this to the Board of Commissioners with a finding that the conditions are reasonable and appropriate for the use and the site plan. Seconded by David Hines.

Vote: Ayes – Unanimous

**Preliminary Plat Review - Burnside Estates - Phase 3; 7 Lot Major Subdivision, Parcel #024655000**

Michael Morway, Engineer with Albemarle & Associates was present as a representative of the applicant.

Mr. Gillam detailed that Burnside Estates Phase 3 has a total site area of 2.96 acres and is a proposed seven-(7) lot subdivision, whereby the smallest lot size is 15,056 sq. ft., which meets the dimensional requirement of the R-2 District. He further detailed that a new road would be constructed to access these lots off of Burnside Road. Mr. Gillam also mentioned an existing barn on the site will be demolished as part of the subdivision development and detailed the size and development of the parcel will require stormwater management and sedimentation erosion control permits, which are currently in the process of being obtained. Additionally, Mr. Gillam advised us the Dare County Fire Marshal has reviewed the preliminary plat, has provided comments and has since worked with the engineer to address those comments, which are included in the meeting packet.

Mr. Morway, Engineer, reiterated that there is 325' of roadway to access seven-(7) lots designed to NCDOT standards and the required permit applications pertaining to stormwater and erosion have been submitted and are in the review process. Mr. Morway also ensured the Board that he is coordinating with the Fire Marshal on the outlined comments.

Terry Gore made a motion to approve the preliminary plat for the Burnside Estates Subdivision, Phase 3, subject to the aforementioned conditions. Mr. Gillam interjected suggesting an amendment to this motion to include the engineered construction plan as part of the approval of the preliminary plat, as well as the condition of the 10.5' setback being addressed through covenants instead of on the plat. Terry Gore continued with the motion accordingly. Seconded by David Overton.

Vote: Ayes – Unanimous



**Preliminary Plat Review - Edgecamp Estates Subdivision, Lots 1-9, Salvo**

John Robbins, applicant, was present as a representative of Edgecamp.

Mr. Gillam began by referencing that this subdivision was previously reviewed by the Planning Board in fall of 2018 and was granted preliminary plat approval, however, it expired prior to any improvements being installed and is now subject to another review. Mr. Gilliam detailed the total site area is 15 acres and the number of proposed lots is nine-(9), with the smallest lot being 22,782 sq. ft.

Mr. Gillam further advised that one of the lots (Lot 9) would be accessed from the existing road of Phase 3, Wind Over Waves Subdivision and the other eight lots would be accessed from NC Hwy 12 through shared driveways, of which the Dare County Subdivision Ordinance allows for access, but is subject to approval from Dare County Board of Commissioners. These shared drives must be installed to NCDOT standards and capable of supporting 75,000 lbs. Mr. Gillam stated eight of the lots will have individual on-site septic systems, while the other, smallest lot will be granted access to a central wastewater system that is owned by the developer of Edgecamp Estates. Mr. Gillam directed that one of the conditions of approval before sending this before the Board of Commissioners for review, is that an updated preliminary plat will be required, with an up to date observed water level verification to ensure that Lot 9 is a buildable lot due to the CAMA 30' buffer and the applicable setbacks.

Mr. Robbins, the representative of Edgecamp, confirmed this subdivision matches what was submitted in 2018, with the exception of the change to the property lines to Lots 2 and 3, which allows for better separation from the wetlands. Mr. Robbins also stated the maintenance of the shared driveways will be addressed in the HOA documents, noted on the plat and will be the responsibility of the HOA.

Terry Gore made a motion to recommend approval based on the conditions mentioned and forward to the Board of Commissioners for approval of the use of shared drives. Seconded by David Hines.

Vote: Ayes – Unanimous

**OTHER BUSINESS**

The Oath of Office was administered to Planning Board member, David Hines and to the newly appointed Planning Board Chairman, John DeBoy, as required by NC General Statutes Chapter 160D.

The Planning Board's Chairman, John DeBoy took a moment to publicly thank his predecessor, former Chairman John Finelli, for his hard work and dedicated years of service. Additionally, he humbly extended his gratitude to the Commissioners for their faith in him on his appointment as the Planning Board Chairman.



Minutes of the Dare County Planning Board  
February 6, 2024 meeting

**ADJOURNMENT**

There being no further business before the Dare County Planning Board, a motion to adjourn was made by Terry Gore and seconded by Buddy Shelton.

Vote: Ayes – Unanimous

The meeting adjourned at 6:33 p.m.

Respectfully Submitted,

Gerri Ellington  
Planning Board Clerk

APPROVED: March 5, 2024

John DeBoy  
Chairman, Dare County Planning Board

**DRAFT**

# SUBDIVISION FACTSHEET

Planning Board – March 5<sup>th</sup>, 2024 Preliminary Plat Review

**NAME:** Jonna O. Midgette Subdivision  
**LOCATION:** Rodanthe, NC  
**SITE SPECIFICS:** Total site area: 4.274 acres  
Number of proposed lots: 2 + residual parcel  
Smallest lot area: 16,232 square feet  
Zoning: S-1 District

**STREETS:**

Each lot is accessed from a proposed 20' easement. The applicant is required improve the entire access easement with gravel capable of handling emergency and trash collection vehicles (75,000 pounds).

**UTILITIES:**

Water: Centralized water-supply  
Sewer: Individual on-site septic system  
Stormwater: No state permits required per NC Department of Environmental Quality

**STAFF COMMENTS:**

The Dare County Planning Board previously reviewed this preliminary plat on September 5, 2023, and recommended approval of the preliminary plat, however since that time the property owner has decided to change the lot lines and size of parcel 4 as labeled on the preliminary plat. Since the parent parcel exceeds the acreage threshold for administrative approval the plat must be reviewed again by the Planning Board. The proposed lots meet or exceed the minimum lot size requirements for the S-1 zoning district. The proposed lots are currently vacant. The Dare County Fire Marshal and the Fire Chief for the Chicamacomico Fire Station have reviewed the plat, and notes have been added to the plat based on their comments.

The requested action is a motion to approve: "I move that the preliminary plat for the Joanna Midgette Subdivision be granted approval."



Noah H Gillam  
Planning Director

2/24/2024

DATE





## County of Dare

P.O. Box 1000 | Manteo, North Carolina 27954 | 252.475.5000

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February 28, 2024

### MEMORANDUM

TO: DARE COUNTY PLANNING BOARD

FROM: Morgan Potts, Planner

RE: Special Use Permit Application #01-2024 Cluster Home Development for  
Derek Hench/House Engineering, P.C.

### INTRODUCTION

A Special Use Permit application and a site plan has been submitted by Derek Hench/House Engineering, P.C., for a proposed cluster home development. The property is located on Midgett Mobile Court in Rodanthe. The property is identified as parcel 012572001 on the Dare County Tax Records. The property is zoned S-1 and cluster home developments are allowed in this district subject to review as a special use, as referenced in 22-31.1 of the Dare County Zoning Ordinance.

A cluster home development is defined in Section 22-2 of the Dare County Zoning Ordinance as a residential group development project consisting of more than one residential dwelling on one parcel of land whereby the dwellings are occupied on a long-term basis. Long-term occupancy is defined in the County Zoning Ordinance as a residential dwelling that is occupied and used for residency and housekeeping purposes for a period of 31 days or more.

### BACKGROUND

The parcel is 1.3 +/- acres (approximately 57,000 square feet) and exceeds the minimum lot size required for a cluster home development. The applicant is proposing to construct 8 three-bedroom wood framed individual dwelling units on the parcel. The proposed dwellings will be less than 1,200 sq. ft. and separated by 16 feet in width. When complete, all improvements upon the parcel will create a total of 28% of lot coverage. The proposed design meets the minimum requirements of the Ordinance. A copy of Section 22-31.1 is attached for the Board's review.

### OVERVIEW

The area of disturbance for the proposed development will require the applicant to apply for an Erosion and Sediment Control permit and a Stormwater Management permit from the North Carolina Department of Environmental Quality. Dare County does not have a stormwater management ordinance and we rely on the State's stormwater permitting process. The applicant



plans to manage stormwater runoff internal to the property through a series of basins and swales as depicted on the site plan's grading and drainage plan. The State permits will be applied for once the applicant receives local approval, and copies of approvals shall be provided to the planning department before ground disturbing activities can occur. In the event that the State's review requires a reduction to the proposed built upon area, those changes can be handled administratively. Section 22-65 of the Dare County Zoning Ordinance allows for minor modifications to approved Special Use Permits such as a reduction in lot coverage to be exempt from the full application and approval process and may be approved by the Planning Director in writing.

The parcel is currently vacant, however, there exists a former sand mine borrow pit, and the borrow pit fencing. The former borrow pit will be filled and the fencing removed. The applicant has an engineered plan to successfully backfill the pit with suitable materials in layers. Each layer will be laid, compacted, and then watered down before the next layer is laid. The area will then be graded to match the surrounding terrain. A total of 4 layers is indicated on the submitted plans. The Planning Department advises that the Board include as a Condition that an independent, third party Engineer licensed in the State of North Carolina, certify that the materials used to fill the former borrow pit will be capable of supporting vehicular traffic, emergency vehicles, the proposed dwellings and their building pads.

Each structure in the cluster home development will be accessed from the existing Midgett Mobile Court, which will lead to a separate road for the development. The Dare County Fire Marshal has reviewed the site plan and provided a Memo to Planning Staff noting his comments. The Memo is attached in its entirety for your review.

Parking for cluster homes shall be provided at a rate of one parking space per bedroom of each cluster home, 50% of the required parking being of an impervious surface of concrete or asphalt. The applicant is proposing to construct the dwellings on pilings with parking for two vehicles on concrete underneath the dwelling, and a third in between units. The required number of spaces for the development is 24 spaces, and the proposal meets that requirement.

The wastewater for the proposed cluster home development will be handled by an engineered wastewater system. The system will be monitored twice per year by Dare County Environmental Health to ensure proper effluent quality. An "Operations and Maintenance Plan" will be included within the homeowner's association documents. Any fees associated with the monitoring will be paid by the developer until a homeowner's association is created, after which it will become the responsibility of the HOA to administer. Before the issuance of building permits, the applicant will have to obtain septic permits for the engineered wastewater system through Environmental Health. Copies of these permits shall be provided to the Planning Department as part of the building permit process.

Dare County Public Works has reviewed the site plan, and at this time had no comments. As depicted in the plans, there will be a centralized location for the dumpster with adequate turn radius for waste management vehicles.

Landscaping for the development shall adhere to the planting details found on the submitted "Landscape Plan". The developer shall agree to maintain the landscaping as noted in the plans, until a homeowners' organization is created.



A copy of the as-built site plan will need to be recorded in the Register of Deeds once the infrastructure improvements have been completed. If it is the intention of the developer to sell the individual footprints of the structures, then homeowner's restrictive covenants must be provided to the Planning Department. Only the footprint of the structure can be conveyed to the individual owners with the remainder of the site designated as common area. The homeowner's documents shall include language that defines the occupancy of the structures as long-term as defined in the Dare County Zoning Ordinance (longer than 31 days). This information shall be noted on the site plan as well.

A draft SUP is attached to this memo for the Planning Boards review. Conditions can be added as part of the discussion before this item is forwarded to the Board of Commissioners.

Attachments:

Draft Special Use Permit  
Fire Marshall's Comments  
Section 22-31.1 of the Dare County Zoning Ordinance

**DRAFT**



**Special Use Permit No. #01-2024**

Dare County Sections 22-27.1, 22-31.1, 22-65, 22-70, 22-72

**Application of:** Derek Hench/House Engineering, P.C.

On April XX, 2024, the Dare County Board of Commissioners considered the application of the Petitioners above named which application is on file with the Dare County Planning Department, and the Board finds as follows:

1. That the written application of Petitioners with attachments has been duly submitted to the Dare County Planning Department as required by Section 22-65 of the Dare County Code (hereinafter referred to as "Code");
2. That the application substantially complies with the requirements of the Code in that it requests uses permitted by special use permit under the Code subject to the quasi-judicial procedures set forth in Section 22-70, including; Cluster Home Developments;
3. The subject property is zoned S-1. This property is identified on the Dare County tax records as Parcel 012572001 and located in the Rodanthe Tax District;
4. That the Dare County Board of Commissioners is empowered under sections of the Code set out above to approve special uses and apply reasonable and appropriate conditions;
5. That the notice procedures of Section 22-72 of the Code have been implemented in the review of this Special Use Permit;
6. That upon the evidence received, the testimony presented, and the submitted written record, there are sufficient facts to support the issuance of this Special Use Permit according to the following terms and conditions:



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**SPECIAL USE:** A Cluster Home Development consisting of 8 residential structures. A site plan depicting the proposed improvements identified as Appendix A is included as part of this permit.

## **CONDITIONS:**

1. The cluster home development shall operate as prescribed in the definition set forth in Section 22- 31.1 of the Dare County Zoning Ordinance. The structures shall be constructed as depicted on the Appendix A.
2. All structural improvements shall be located in the dwelling footprints as recorded on the final plat.
3. The structures shall be located on the parcel in conformance with the setbacks of Section 22-27.1 and Section 22-31.1 of the Zoning Ordinance and the Dare County Flood Damage Prevention Ordinance.
4. All dwellings are restricted to being utilized for long term occupancy only. Long-term occupancy is defined in Section 22-2 of the Dare County Zoning Ordinance as a residential dwelling that is occupied and used for residency and housekeeping purposes for a period of 31 days or more.
5. All dwellings are restricted to a maximum size of 1,200 square feet of heated/conditioned space.
6. It is the responsibility of the Petitioner(s) to obtain all necessary Local, State & Federal Permits prior to ground disturbance, which includes Erosion and Sediment Control, Stormwater Management, CAMA, On-Site Wastewater Disposal, & Dare County Building permits.
7. A final site plan of the cluster home development depicting the footprint areas shall be recorded in the Register of Deeds. The dwelling units may be transferred to individual owners with the remaining area of the site dedicated as common area owned by a homeowner's association or other similar entity. A copy of the signed special use permit shall be recorded with the final site plan.
8. The recorded homeowner's documents shall include fees for the maintenance of the wastewater systems, stormwater infrastructure, road improvements, and any other infrastructure. A copy of the recorded homeowner's documents shall be provided to the Dare County Planning Department.

# DRAFT

9. Building permits for the structures shall be secured within 24 months from date of Board of Commissioners approval. An as-built survey for the property shall be submitted to the Planning Department upon the completion of all of the structures to confirm compliance with the terms of the Dare County Zoning Ordinance. If the developer chooses to construct the structures at different times, then individual as-built surveys for each structure shall be required before any structure is certified for occupancy.
10. All structures shall be constructed in compliance with the requirements of the Dare County Fire Marshal, North Carolina Building Code, and the North Carolina Fire Code.
11. There shall be no staging of equipment or materials in or along the right-of-way of NC Highway 12 and/or Midgett's Mobile Court.
12. An independent, third party Engineer licensed in the State of North Carolina shall certify that the materials used to fill the former borrow pit will be capable of supporting vehicular traffic, emergency vehicles, the proposed dwellings and their building pads.
13. The Petitioner(s) shall adhere to the vegetative buffer, planting details, and Landscaping notes found on the submitted "Landscape Plan". The developer must agree to maintain the landscaping as noted in the plans. until the homeowners' organization is created, and must agree to contribute to that organization its share of the maintenance for all lots retained by the developer or successor.
14. The Petitioner(s) shall adhere to the provisions of Section 22-60, "Outdoor Lighting" of the Code and the lighting details provided on the submitted "Landscape Plan".
15. Roads internal to the development shall be paved and constructed as depicted on the approved site plan. The road shall be constructed to support 75,000 pounds as indicated by the Dare County Fire Marshal. Upon completion, road improvements shall be certified by a NC licensed engineer to the meet the weight specification stipulated by the Fire Marshal. Road maintenance shall be the responsibility of the Petitioner or any homeowners association that is established for the cluster home development. The road improvements shall be perpetually maintained to comply with the approved construction specifications. All roads shall be maintained with a clear height of 13-feet 6-inches



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16. There shall be no parking allowed on the roads within the subdivision. Signs and surfacing markings shall be as specified by the Dare County Fire Marshal's Office.
17. A Knox Box Lock key for the access gate shall be provided to Chicamacomico Banks Volunteer Fire Department. The gate must be at minimum 20 feet wide to allow for fire apparatus to be able to turn in or out of this access point.
18. A fire hydrant shall be installed at the entrance to the access drive between Midgett's Mobile Court and the access drive. Fire hydrants shall be installed within 400-feet of the dwellings, and shall have a minimum water fire flow rate of 1,000 gallons per minute. Any deviation from the proposed structures' heights must be approved by the Fire Marshal & Planning Director. Successful water flow testing is required prior to the issuance of any Certificates of Occupancy.
19. All street names and addressing which must be approved by the Dare County Fire Marshall and coordinated with Dare County 911.
20. All water lines for the fire hydrants and basic road improvements must be installed and approved prior to the commencement of any home construction. Roads must remain clear during construction for emergency vehicle access.
21. The ownership, operation and maintenance of the engineered wastewater system shall be conveyed to a home owners' association or similar organization. The "Operations and Maintenance Plan" shall be included within the homeowner's associated documents. The developer must agree to maintain the engineered wastewater system until the homeowners' organization is fully functional, and must agree to contribute to that organization its share of the wastewater system maintenance retained by the developer or successor.
22. No changes or deviation from the terms and conditions of the special use approval shall be made until written approval of the proposed changes or deviations has been obtained from Dare County. The quasi-judicial procedures set forth in the Code shall be followed for the review and approval of major modifications. Minor modifications as established in Section 22-70 of the Code may be authorized administratively by the Planning Director.
23. A violation of this Permit shall be a violation of the Code and the special use may be revoked by the Board of Commissioners. Special use approval shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any

# DRAFT

development regulation or any State law delegated to Dare County for enforcement purposes; or for false statements or misrepresentations made in securing special use approval. The same process for approval of a special use permit, including notice and hearing, shall be followed in the revocation of a special use permit.

24. All other terms and provisions of the Dare County Zoning Ordinance shall remain in full force and effect except as herein specifically permitted otherwise.

This xxth day of April, 2024

SEAL:

COUNTY OF DARE

By: \_\_\_\_\_  
Robert L Woodard Sr.  
Chair, Dare County Board of  
Commissioners

ATTEST:

By: \_\_\_\_\_  
Skyler Foley  
Clerk to the Board

**THIS PERMIT AND THE CONDITIONS HEREIN ARE ACCEPTED**

By: \_\_\_\_\_  
Dereck Hench, Owner

APPROVED AS TO LEGAL FORM

By: \_\_\_\_\_  
Robert L. Outten,  
County Attorney



## **SECTION 22-31.1 - CLUSTER HOME DEVELOPMENTS (Adopted 10-15-2018)**

Cluster home developments consist of more than one residential dwelling on one parcel of land whereby the dwellings are occupied on a long-term basis. These standards are designed to facilitate the development of cluster home projects in unincorporated Dare County subject to the following provisions. The following provisions shall apply:

- (a) Cluster homes developments shall be subject to review and approval as special uses in the following zoning districts: R-2, R-2H, R-3, RS-6, RS-8, C-2, C-2-H, C-3, 1-1, S-1, and CS. Minimum lot size: 20,000 square feet in these zoning districts.
- (b) Cluster homes developments shall be subject to review and approval as special uses in the following zoning districts: SNC. Minimum lot size: 30,000 square feet in these zoning districts.
- (c) Setbacks: Dwellings constructed as part of a cluster home development shall be subject to the setbacks of the applicable zoning district.
- (d) Separation of dwellings: 15 feet.
- (e) Lot coverage: 30% of the total lot area.
- (f) Building height: Same as the applicable zoning district.
- (g) Maximum size of dwelling: Any dwelling constructed as part of the cluster home development shall not exceed 1,200 square feet of heated/conditioned space.
- (h) Parking: Parking for cluster homes shall be provided at a rate of one parking space per bedroom of each cluster home. Such parking may be provided at individual dwelling sites or in a congregate area for the entire development. Fifty percent (50%) of the required parking shall be of an impervious surface of concrete or asphalt (not to include asphalt millings or other similar products).
- (i) Roads – cluster home developments that cannot be properly served by emergency or service vehicles from an existing abutting road or street, shall be made accessible to such vehicles from a 30' right-of-way with 20 feet of paved improvements.
- (j) Ownership of cluster homes – cluster home sites may be transferred to individual owners with the remainder of the lot dedicated as common area owned by a homeowners association or similar entity. Cluster homes shall be occupied or rented on a for long-term occupancy as defined in Section 22-2 of the Zoning Ordinance.
- (k) A copy of the approved special use permit for a cluster home development shall be recorded with the approved site plan of the development.
- (l) Other reasonable and appropriate conditions to reflect individual specific site conditions may be applied to cluster home development as part of the special use review and approval process.

(Ord. passed 10-15-2018; Am. Ord. passed - - ; Am. Ord. passed 6-21-2021; Am. Ord. passed 5-17-2023)





COUNTY OF DARE  
Department of Emergency Management  
Office of the Fire Marshal  
P.O. Box 1000, Manteo, North Carolina, 27954

Steven R. Kovacs, NC-CFI  
Deputy Emergency Manager/Fire Marshal

(252) 475-5750

To: Morgan Potts, Planner  
From: Steven R. Kovacs, Fire Marshal  
Date: February 20, 2024  
Re: The Cottages of Rodanthe Village

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I have reviewed the submitted site plan and have the following comments:

- All roads shall be constructed of a material so to have an all-weather surface capable of carrying the imposed weight of fire apparatus of at least 75,000 pounds. This is noted on page 2 and 3 of the plans which is acceptable.
- All roads shall be maintained with the noted width of at least 20 feet and the clear height of 13-feet 6-inches, and an all-weather surface. This shall be noted on the final recorded plat.
- There shall be no parking allowed on the roads within the subdivision. Signs and surfacing markings shall be as specified by the Dare County Fire Marshal's Office. This is noted on pages 2 & 3 which is acceptable.
- The road length exceeds 150-feet and will require a turn around area for fire apparatus. This area meets the requirements noted above to include a separate gate which will be provided with a Knox Lock keyed to Chicamacomico Banks VFD. The gate needs to be wider than 20 feet to allow for apparatus to be able to turn in or out of this access point. See comment on the plans.
- There needs to be a fire hydrant within 400-feet of the structures along the travel path of the fire apparatus. Currently the shows a fire hydrant in the area of the Cemetery on Midgett's Mobile Court. The hydrant exceeds the travel distance by 100 feet. Need to add a fire hydrant to the entrance to the access drive between Midgett's Mobile Court and the access drive noted on the marked plan. The marked location has been discussed and approved by the Fire Chief. Locating the fire hydrant on the north side of Midgett's Mobile Court would hamper fire operations.
- The needed water fire flow for the proposed subdivision at this time is 1,000 gallons per minute which is noted on pages 2 and 3. This is based on the 16-foot separation and 3 stories using the commercial calculation as noted below. Any changes to these conditions would change the needed fire flow requirements.

*For 1- and 2-family dwellings not exceeding 2 stories in height, the following needed fire flows shall be used shall be based on distance between the two homes:*

**DISTANCE BETWEEN BUILDINGS NEEDED FIRE FLOW**

More than 30 feet	500 gpm
21 – 30 feet	750 gpm
11 – 20 feet	1,000 gpm
0 – 10 feet	1,500 gpm

For 1- and 2-family dwellings, **exceeding the two-story height** or with an effective area greater than 4,800 square feet the needed fire flow will be calculated the same as commercial projects.

- Need to obtain current with test data and provide documentation that the designed waterline shall be capable of providing the needed fire flow requirement as previously noted.
- Need to note street names and addressing which must be approved by this office and coordinated with Dare County 911.
- All water lines for the fire hydrants and basic road improvements must be installed and approved prior to the commencement of any home construction. Roads must remain clear during construction for emergency vehicle access. As noted on the plan.

*\* Please understand that approval of any documents in no way relieves the owner, the architect, the engineer, or the contractor from the responsibility of violations of governing codes and regulations not found by our office. When such violations are found they must be corrected.*

**COUNTY OF DARE  
ZONING AMENDMENT APPLICATION  
OR AMENDMENT TO DEVELOPMENT REGULATION**

Any zoning map, zoning text amendment, or amendment to other development regulation is subject to legislative review and approval by the Dare County Board of Commissioners according to the procedures of Section 22-81 of the Dare County Zoning Ordinance. Applications for amendments shall be made in writing to the Dare County Planning Director and shall be signed by all property owners or their duly authorized agents.

**Property Owner (s)** Pledger Palace Child Development & Education Center, Inc.

**Address:** 6325 N. Croatan Highway, Martin's Point, NC 27949

**Telephone:** 252-261-2126

**Email:** varnell@ncobxlaw.com

**Property Description:**

4 Martin's Point Commercial Lots

Lot Phase/Section Block Subdivision

Parcel: 021865004 PIN: 986606392109

**Text Amendment**  **Map Amendment**

**Present Zoning Classification:** OTHER

**Requested Zoning Classification :** OTHER

**Explanation of Request:** Please see attachment.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Amendment applications shall not be processed by the Planning Director until such time that all review fees have been paid and all necessary documents have been submitted. Once the application is determined to be complete, the Planning Director shall schedule review of the application as established in the Zoning Ordinance Sections 22-82 to 22-86. Amendments are legislative decisions and involve review by the Planning Board and Board of Commissioners. The notice procedures of Section 22-72 of the Zoning Ordinance shall be implemented by the Planning Director. Citizen comments shall be processed according to Section 22-82 and Section 22-85 of the Zoning Ordinance.

**Applicant:** \_\_\_\_\_

**Date:** \_\_\_\_\_

2/13/2024



## ZONING TEXT AMENDMENT APPLICATION

(APPLICANT: PLEDGER PALACE CDEC, INC.)

The proposals under this Zoning Text Amendment are to:

A) Modify Chapter 22 (*Zoning*), Section 22-2 (*Definitions*) of the Dare County Code of Ordinances to:

- 1) Define the term “Shared Space-Occupancy Dwelling (SSO)”.
- 2) The proposed definition of “Shared Space-Occupancy Dwelling (SSO)” is:

*Shared Space-Occupancy Dwelling (SSO)* means a private structure in which shared spaces are offered for long term rental. Each shared space offered for rent within the structure shall exist within the confines of four walls, and separate and apart from any other shared space located within the structure. Residents of the SSO shall share a kitchen facility and common living area with all other residents.

NOTE: The intent of establishing SSO’s as a special use with this zoning district is to provide for more affordable housing to non-transient residents. The residents would generally be any single persons in need of affordable housing, which residents may include J-1 Work Visa students who commonly need housing on the Outer Banks during the tourist season.

B) Modify Chapter 22, Section 22-17.2 to:

- 1) Add “Shared Space-Occupancy Dwelling (SSO)” to the list of permitted uses within the MP-C (Martin’s Point Commercial) Zoning District.
- 2) The proposed amendment language is as follows:

**Sec. 22-17.2. – MP-C (Martin’s Point Commercial District).**

*Special Uses.* The following uses shall be permitted only through a special use permit approved by the Dare County Board of Commissioners, and being subject to any condition specifically named herein:

Shared Space-Occupancy Dwelling (SSO).

- a. The maximum number of occupants in any shared space offered for rent within an SSO shall be twelve (12).
- b. Any shared space offered for rent within an SSO shall be of such dimensions as to provide for fifty square feet (50 sq. ft.) of living space for each occupant residing therein.
- c. Any shared space offered for rent within an SSO shall contain a minimum of two (2) toilets and two (2) sinks for use by occupants.
- d. Any SSO shall contain sufficient bathing facilities to conform to the following ratio: One (1) bathing facility per five (5) occupants.
- e. Any SSO shall contain a minimum of eight (8) washing machines and eight (8) clothes dryers.
- f. There shall be one (1) parking space per every five (5) occupants. The parking of any motor vehicle shall only occur in a designated parking space.
- g. The location of an SSO shall be a minimum of 100 feet from any residentially zoned property.
- h. The owner of the SSO shall designate at least one (1) person who shall have the duty to oversee and manage an occupied SSO. The contact information



for this person(s) shall be submitted upon application for a special use permit.

NOTE: The overwhelming majority of J-1 Work Visa students will not have a motor vehicle. The primary means of transportation for those residents will be either: 1) bicycle; or 2) on foot/pedestrian.



## County of Dare

P.O. Box 1000 | Manteo, North Carolina 27954 | 252.475.5000

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February 28, 2024

### MEMORANDUM

TO: DARE COUNTY PLANNING BOARD

FROM: Noah H Gillam, Planning Director

RE: Text Amendment to Section 22-17.2 MP-C District to include Shared Space-Occupancy Dwellings to the list of Special Uses

### Introduction

A zoning text amendment application has been submitted by attorney Casey Varnell on behalf of Patricia Pledger, owner of Pledger Palace Child Development and Education Center located in the Martins Point Commercial district. The applicant is seeking to amend Section 22-17.2 Martins Point Commercial of the Dare County Zoning Ordinance to allow for Shared Space-Occupancy Dwellings as a special use. As part of the submittal, an amendment to Section 22-2 definitions has been included that defines Shared Space-Occupancy Dwellings. The proposed amendments are only for the MP-C Neighborhood Commercial District, which consists of 10 parcels and is the smallest zoning district in Unincorporated Dare County. The applicant has noted in her application attachments that the intended use of the Shared Space-Occupancy Dwellings is to provide housing for non-transient residents which may include J-1 Work Visa Students.

### Background

The Martins Point Commercial district was released to Dare County for zoning and development regulations purposes in November of 2023 by the Town of Southern Shores. Before being released to Dare County, the 10 Martins Point Commercial properties were under the regulation of the Town Southern Shores, and the properties were located in the C, General Commercial District on the Towns zoning map. In May/June of 2023, the applicant submitted a text amendment to the Town seeking the addition of Shared Space Occupancy Dwellings to the list of permitted uses in the



Towns General Commercial District. Both the Towns Planning Board and Board of Commissioners voted to deny the applicant's request based on the potential impacts of the proposed use on adjacent properties.

### **Staff Review of Proposed Language**

The applicant has defined Shared Space Occupancy Dwelling as follows:

*Shared Space-Occupancy Dwelling (SSO) means a private structure in which shared spaces are offered for long-term rental. Each shared space offered for rent within the structure shall exist within the confines of four walls, and separate and apart from any other shared space located within the structure. Residents of the SSO shall share a kitchen facility and common living area with all other residents.*

In the review of the proposed definition, Dare County Planning staff found that the structure defined would be classified as a Residential Group R occupancy structure in the 2018 North Carolina State Building Code. Group R occupancy is broken down into 4 classifications based on the services provided, length of stay (transient/non-transient), and number of occupants. With the applicant including the long-term rental requirement, the classification would either be a group R-2 or group R-3 depending on the number of occupants permitted in the structure. As defined by the applicant an SSO would be classified by the North Carolina Building Code as either Congregate Living Facilities or Dormitory. The State defines Congregate Living Facilities as a building or part thereof that contains sleeping units where residents share bathroom or kitchen facilities, or both. A dormitory is defined by the State as a space in a building where group sleeping accommodations are provided in one room, or a series of closely associated rooms, for persons not members of the same family group, under joint occupancy and single management. This classification is important and is what building code officials will use when reviewing building plans for occupancy load ratings and building code compliance.

The applicant has proposed the use of SSO as a special use under section 22-17.2 MP-C. Included in the applicant's draft language is a proposed change to the Sections preamble for Special Uses. The applicant has proposed the following:

*Special Uses. The following uses shall be permitted only through a special use permit approved by the Dare County Board of Commissioners, and being subject to any condition specifically named herein:*

This proposed language is not consistent with the current language in Section 22-17.2 or any other zoning district regulation found in the Dare County Zoning Ordinance. I recommend if the Board chooses a favorable motion on this amendment that the special



use preamble shall be consistent with how it is found in all other zoning districts throughout the Ordinance.

The applicant has included eight proposed requirements for Share Space-Occupancy Dwellings which are listed below with staff comments on each of the regulations

- A. *The Maximum number of occupants in the shared space offered for rent within an SSO shall be twelve (12)*
- B. *Any Shared space offered for rent within an SSO shall be of such dimensions as to provide for fifty square feet (50 sq.ft.) of living space for each occupant residing therein.*

The definition provided by the applicant for SSO's establishes that multiple shared space rooms can be located in an SSO, requirement (A) limits the number of occupants in a shared space room to 12 occupants. Requirement (B) establishes the square footage required for each occupant.

The fifty square feet per occupant is consistent with the North Carolina Building Code requirements for minimum floor area allowances per occupant in dormitories. However, these two requirements do not establish a density limit or a ratio of occupants to building size or parcel size. The only limiting factors to occupancy would be the established lot coverage limitation for the MP-C and Environmental Health Septic regulations. Without a density limit, the proposal would allow for a potential occupant density that is greater than what is allowed in all zoning districts in Dare County that allow for multi-family structures or similar developments. The typical density limitations in Dare County zoning ordinance are 6-10 dwelling units per acre, with the typical dwelling unit being two- to three bedrooms and each room sleeping two people based on Environmental Health Department regulations. The same density limits can be found in districts that allow for hotels/motels. In addition, as was seen with the 2023 Wanchese Cluster Home development the use of engineered wastewater systems increases a developer's ability to maximize a parcel's density since these systems can treat a higher volume of waste in a smaller area than a traditional septic system. Without a density limit and the availability of engineered wastewater systems could afford a developer the ability to have density that is inconsistent with the surrounding neighborhood's patterns of development.

- C. *Any shared space offered for rent within an SSO shall contain a minimum of two (2) toilets and (2) sinks for use by occupants*
- D. *Any SSO shall contain sufficient bathing facilities to conform to the following ratio: One bathing facility per five (5) occupants.*



The Dare County Chief Building Inspector has reviewed this proposed language and has determined the proposed language for bathroom and bathing facilities meets the State building code requirements for a dormitory with the occupancy as proposed in requirement (A) for a shared space. Staff recommends that requirement (C) be proposed as a ratio of occupants to toilets/sinks as found in the Building Code. As drafted by the applicant, it makes it a requirement that the toilet facilities must be located in the shared space sleeping rooms and this might not be desired by all developers.

E. *Any SSO shall contain a minimum of eight (8) washing machines and eight (8) clothes dryers.*

Washing machines and dryers are not required by the North Carolina Building Code; however, staff feels that they should be provided by the developer of an SSO. The language as proposed by the applicant would require that a proposed developer of a SSO regardless of the number of occupants install eight washers and dryers. This language should be provided at a ratio similar to that of bathing facilities.

F. *There shall be one (1) parking space per every five (5) occupants. The parking of any motor vehicles shall only occur in a designated parking space.*

The proposed parking language as written by the applicant is not adequate for the intended use. The applicant has noted in the text amendment application that SSOs are intended to be used by J-1 Visa Students who typically do not have vehicles and rely on bicycles for transportation or walking to and from jobs. This may not always be the case. Staff feels that parking should be supplied at a ratio that is consistent with hotels or some other similar use. J-1 students are often only here during the summer tourist months, the remainder of the year a SSO could be used to house construction workers or other workers that are here for months at a time and would likely have vehicles. If the Planning Board is to find a favorable motion on this text amendment staff recommends a ratio of one parking space per 3 occupants.

G. *The location of an SSO shall be a minimum of 100 feet from any residentially zoned property.*

As found throughout the Dare County Zoning Ordinance a setback from residentially zoned properties is typical when a potentially intrusive commercial use abuts residential zoned districts or uses. In addition, the Martins Point Commercial District requires a visual buffer of fencing 6 to 8 feet in height or a vegetative buffer at least 6 feet in height along rear property lines.

H. *The owner of the SSO shall designate at least one (1) person who shall have the duty to oversee and manage an occupied SSO. The contact information for this person(s) shall be submitted upon application for a special use permit.*

This requirement as proposed by the applicant seems inadequate for the proposed use. Without the property having an occupancy/density limitation there is the potential for a high occupancy/density without any onsite management, maintenance, or security. As the applicant has noted in the application documents the intended resident of an SSO would be a J-1 Visa Students who come to Dare County from all parts of the world with different cultural backgrounds.

In staff's opinion without onsite management services the potential for an unsafe environment, unsanitary living conditions, and conflict among residents increases. Staff feels that on-site 24-hour staffing should be required to ensure the health and safety of the residents.

#### **Other Staff Comments**

The proposed amendment does not address the internal shared common living area spaces dimensional requirements internal to the structure and does not address open space requirements for the outside of the property. Staff feels the applicant should include dimensional requirements for kitchen space and common living areas. Staff feels this should be provided at a square footage per occupant in those areas. A similar ratio should be applied for open space outside of the structure for recreation for the residents.

#### **LUP Consistency**

As is the case with any zoning text amendment the Planning Board shall determine if the proposed amendment is consistent with the Dare County Land Use Plan, and provide a written recommendation to the Board of Commissioners that addresses the plan consistency. In the review of the proposed amendment and the 2022 Dare County Land Use Plan, staff found that two policies under the Residential Development heading in the Land Use Compatibility section apply to the proposed amendment.

*LUC Policy #6 states: that residential development shall be the preferred land use in unincorporated Dare County for the seasonal accommodations and year-round housing. All new residential structures, whether attached or detached are encouraged at a scale that is consistent with existing neighborhood patterns of development.*

*LUC Policy #7 states: that diversification of housing opportunities to address the housing needs of Dare County's year-round population is supported. Multi-family dwellings and other types of residential structures, such as accessory-use dwellings,*



*are appropriate alternatives. Amendments of existing dimensional requirements to create flexibility for the development of year-round housing may be acceptable if such amendments are consistent with existing patterns of development and scale of neighborhoods.*

In the review of the two policies listed above it is staff's recommendation the proposed text amendment be denied by the Planning Board since the proposed amendment does not establish an occupancy/density limitation for the proposed use. The language as drafted by the applicant creates the potential for properties in the MP-C to be occupied with a density that is inconsistent with the scale of the MP-C zoning district and surrounding neighborhoods/districts. In addition, the proposed text amendment would allow for a density that has the potential to be greater than that found in any other zoning district in Unincorporated Dare County. The only limiting factors to density with the proposed text amendment would be the established lot coverage limitation, and wastewater system capacity. As was mentioned prior in this memo, engineered systems without a density limitation afford developers the option to maximize development density on a parcel that is not compatible with the scale of surrounding neighborhoods and uses.

## Zoning Amendment Consistency Determination

On March 5, 2024 the Dare County Planning Board considered a zoning text amendment application submitted by attorney Casey Varnell on behalf of Patricia Pledger, owner of Pledger Palace Child Development and Education Center. The zoning text amendment application seeks to amend the Dare County Zoning Ordinance specifically Section 22-17.2 Martins Point Commercial and Section 22-2 Definitions. The text amendment would allow for the addition of Shared Space-Occupancy Dwellings (SSO) as a Special Use in Section 22-17.2 MP-C and would add a definition of Shared Space-Occupancy Dwellings to Section 22-2 Definitions.

The 2022 Dare County Land Use Plan is the comprehensive plan for Unincorporated Dare County adopted by the Dare County Board of Commissioners on January 2, 2024.

A review of the Dare County Land Use Plan found the following policies to be applicable to the zoning text amendments.

### Land Use Compatibility Management Topic

#### Policy LUC #6

*Residential development shall be the preferred land use in unincorporated Dare County for the seasonal accommodations and year-round housing. All new residential structures, whether attached or detached are encouraged at a scale that is consistent with existing neighborhood patterns of development.*

#### Policy LUC #7

*Diversification of housing opportunities to address the housing needs of Dare County's year-round population is supported. Multi-family dwellings and other types of residential structures, such as accessory use dwellings, are appropriate alternatives. Amendments of existing dimensional requirements to create flexibility for the development of year-round housing may be acceptable if such amendments are consistent with existing patterns of development and scale of neighborhoods.*

Based upon a review of these policies, the Dare County Planning Board finds the zoning text amendment to be inconsistent with the 2022 Dare County Land Use Plan since the amendment would allow for development with a density/occupancy that is inconsistent with the existing patterns of development and scale of surrounding zoning districts and neighborhoods in Dare County.

The Planning Board further acknowledges that the intent of the MP-C Zoning District is to provide for the proper grouping and development of commercial facilities to serve permanent and seasonal residents.



The Dare County Planning Board hereby recommends that the proposed text amendments be denied.

February 15, 2024

To: Dare County Planning Staff and Planning Board

From: John Finelli – Martin's Point resident

Ref: Zoning Text Amendment

I'm writing today to express my opposition to the proposed text amendment submitted by attorney Casey Varnell on behalf of Patricia Pledger to add "Shared Space Occupancy Dwelling" as a Permitted Use or Special Use in the MP-C District.

Let me preface this by stating that I am a supporter of Dare County's efforts to provide workforce housing, and I helped draft the zoning ordinance for the Martin's Point Commercial District, which added language that allowed 40% of the floor area of a building to be used for workforce housing. And I have a great deal of respect for the Applicant who ran a successful day care facility at her current location in Martin's Point. But I do not believe that a shared space occupancy dwelling should be located in the Martin's Point Commercial District, especially when every property in that district borders a residential zone, nor do I believe that such a facility, which could be operated under the proposed text amendment, would serve as a safe and pleasant dwelling for the occupants.

As ETJ Representative, I was a member of the Southern Shores Planning Board and represented the Martin's Point Commercial Property Owners when Mr. Varnell and Ms. Pledger submitted a similar proposed text amendment to the Town of Southern Shores last year. Much of what I have to say in this letter represents our research and deliberations. In the end, the Southern Shores Planning Board recommended DENIAL of the request. Despite this recommendation, the Applicant submitted their application to the Town Council which voted 5-0 to DENY at their June 6, 2023 meeting.

Ms. Pledger's application does not have a maximum occupancy rating in the proposed conditions nor has she stated the intended number of occupants. But in her application to Southern Shores her stated objective was 95 occupants in this 7400 square foot building. There are 2 other buildings in the district which are greater in size, one which is 50% larger. So the potential is there for an extremely high occupancy dwelling, possibly the highest number and density of any dwelling in Dare County. The exact number will be limited by a number of factors, wastewater treatment being the biggest.

I am unable to find the term "Shared Space Occupancy Dwelling" in any zoning ordinance or building code. I think this proposed use should have been defined as a "Boarding House" or "Dormitory with cooking facilities".



### Martin's Point Covenants

The Martin's Point Commercial Properties have a set of Protective Covenants, which are recorded in Book 328, Page 78 at the Dare County Registry.

As stated in ARTICLE THREE – RESTRICTIONS ON USE AND RIGHTS OF OWNERS, Section 1. Commercial Use. No lot in the Commercial Area shall be used except for commercial purposes, except where limited residential uses (such as apartments over shops) are permitted by Developer.

ARTICLE ONE – DEFINITIONS. Paragraph (a) states that "Commercial Use" shall mean and refer to all uses permitted as either a matter of right or as a conditional use as set forth in the General Commercial District of the Southern Shores Zoning Ordinance at the time of recordation of this Declaration.

Neither "Shared Space Occupancy Dwellings" nor similar uses were listed as Permitted or Conditional Uses in the Southern Shores Commercial Zoning District in 1982, nor are they currently listed. Ms. Pledger was made aware of that fact a year and a half ago, yet has apparently not taken steps to amend the Martin's Point covenants, as others have.

Dare County does not enforce covenants, but that does not mean that they should trample on them, especially when those covenants apply to every single property in the District.

### Location

A SSO is an inappropriate Use for this location.

The Martin's Point Commercial District is fully developed. With the exception of Central Garden Nursery and the Martin's Point veterinary facility, all of the current uses are office space. An SSO is out of character with the established development and does not conform to the Declaration of Covenants.

A facility such as this should be located an appropriate distance, such as 500 feet, from a residential zone, Occupants will be coming and going at all different hours and it is likely that a large number of residents will be involved in leisure and entertainment in the backyard since the internal space is limited. Noise is a factor and concern of the Martin's Point residents.

Although most workers and visitors to the Outer Banks are well-behaved, a facility such as this will be a revolving door to a large number of young people. Security is a concern to the Martin's Point residents, especially since all of the commercial properties share a common boundary with the residential zone.

### **Living Conditions**

50 – 100 young people from all over the world, at the beach, under one roof. What could go wrong?

One of the conditions in the submitted amendment would allow up to 12 occupants in a shared space (bedroom). That may be acceptable in a backpacker's youth hostel where renters are only there for 2 or 3 days, and are usually getting up and going to bed at the same time. But J-1 workers are coming and going at all hours. Some may be starting work at 4:00 AM stocking shelves. Others will be getting off work at 5:00. Others may be working at a restaurant and not getting off until 1:00 AM. There is no way that 12 individuals sharing a room can get a good night sleep under these conditions or cohabit without conflict.

The draft conditions establish a minimum of 50 square feet of living space for each individual in a shared space (bedroom). As Council Member Paula Sherlock stated at the Southern Shores Council meeting of 6/6/23, "I've known jails that offer larger accommodations than 50 square feet."

With this many people, traveling from all over the world and being exposed to many others during their workday, there is good chance that someone will get sick. We all do, especially with respiratory infections like influenza, Covid and RSV. A dwelling housing a large number of occupants needs some one-person bedrooms where residents can isolate. I'm not even sure that will work. Some research needs to be done, perhaps with nursing homes or shelters.

A facility such as this needs 24 hour on-site management and 24 hour security.

No mention in the draft conditions about common area living space. Where do all of these people hang out? Who is going to make sure that linens are clean? What about the kitchen? How big? Who is going to make sure that it is clean and sanitary? What does the Health Department have to say?

All of the above should be addressed as conditions in the ordinance.

### **Lack of Standards in the Proposed Text Amendment**

When Ms. Pledger's application was discussed at the Southern Shores Planning Board meeting last year, Attorney Varnell tried to make the case that it wasn't necessary to include a detailed list of standards in a zoning ordinance for a Special Use because conditions could be added later during the SUP review on a case-by-case basis. He went on to repeat that when the application went before Town Council. I emphatically disagree with that. The Special Use review can be used to "fine tune" things, such as buffer requirements, lighting, etc., but it cannot be used to legislate.



In his book, "Land Use Law in North Carolina", David Owens, Professor of Law and Government at the UNC Chapel Hill School of Government, devotes an entire chapter to Conditional and Special Use Permits. In a discussion of Adequate Zoning Standards, Professor Owens states the following:

Since decisions on special use permits involve applying legislatively established standards to individual applications, it is essential that the zoning regulation itself include adequate guiding standards for quasi-judicial decisions. It would be illegal to provide for a special use permit without including standards to guide decision-making for those permits. Adequate guiding standards are required even where the governing board is making the quasi-judicial decision.

If there are no standards, or if the standard provided is so general as to leave the board unbridled discretion in its decision, the courts will invalidate the ordinance provision as an unlawful delegation of legislative authority. A board may not legislate through ad hoc quasi-judicial decision-making.

Zoning-regulation provisions that have decision standards for special use permits that are so general as to offer little practical guidance for individual decisions are invalid.

Professor Owens provided case references.

### **Conditions in a Permitted or Special Use Ordinance**

Absent direction from the Board of Commissioners, it's not up to the Staff or Planning Board to draft an ordinance. It's up to the Applicant. And up to this point, neither the Applicant nor her attorney has submitted a proposed text amendment to Southern Shores or to Dare County which has a reasonable set of conditions. They have gone so far as to "resist" conditions.

If the Board of Commissioners were to direct the Planning Staff or Board to draft an ordinance that enabled a Boarding House or Dormitory to function as a Workforce Housing Facility, the following is a list of standards that should be considered. I'm sure there are others. Southern Shores Planning Board Chairman Andy Ward provided the SS Board with a list of conditions that he found in the zoning ordinance of another community. I have included those along with other conditions that I have found in similar zoning ordinances.

### **CONDITIONS TO CONSIDER**

This is a general list. Specific dimensions and numerical requirements would need to be determined. Although I have used the term "adequate", such subjective terms should not appear in an ordinance.



**Living standards** pertaining to common spaces, sleeping arrangements, bathrooms, kitchen and dining, parking, exterior green space. These standards are usually met when the structure is a single family dwelling, but they become critical with high occupancy buildings.

- Adequate common area space within the structure for relaxation and recreation.
- Adequate dining room space and required seating.
- Adequate space and required appliances in kitchen.
- Maximum number of occupants per bedroom. (Some cities and states limit the number of occupants in similar facilities to a maximum of 4 per bedroom).
- Minimum space requirements in bedrooms, often dependent on the use of bunk beds.
- Adequate closet space for residents.
- Minimum standards for the number of toilets, urinals, shower facilities, and water fountains, based on occupancy

Above a certain occupancy, 24 hour on-site management and/or 24 hour on-site security should be required.

On-site camera surveillance should be limited to common areas and outdoor areas, not bedrooms or bathrooms.

If communal cooking is allowed, someone needs to be responsible at all times to insure that the area is sanitary and meets applicable codes.

Who cleans the linens and towels? How often must this take place?

Minimum green space outside of the dwelling. Does this include the buffer areas depicted on the plat or in the zoning ordinance?

**Location restrictions** – Residents all over the Outer Banks have made it clear that they don't like high occupancy rental units next to their homes. Consider restrictions that limit the occupancy of dwellings in districts that border a residential zone or use. Perhaps 20, which conforms to a 10 bedroom house; or a sufficient buffer, such as 500 feet, from any residential zone.

A dwelling unit which is intended as "workforce housing" should be tied to a bona fide employment contract in the County and restricted to long-term rental.

It's important to have as many applicable standards as possible in a zoning ordinance, whether it is a Permitted Use or a Special Use, in order to achieve the desired outcome, to provide guidance to applicants, and in this case, to provide some protection to the residents of the dwelling unit.

February 23, 2024

To: Noah Gillam, Dare County Planning Director

Subject: Homeowner Concerns – Proposed Change in Martin’s Point Commercial Zoning

Dear Mr. Gillam,

As President of the Martins Point Homeowners Association, I am writing to express very serious concerns on behalf of our homeowners and our Board of Directors about the continuing efforts to establish a dense housing facility in our community. In our Board meeting on February 19, we reviewed the proposed text amendment on “Shared Space Occupancy Dwellings” submitted by Patricia Pledger. We urge you to reject this amendment, and deny any related actions

We do not consider the Martin’s Point Commercial District to be an appropriate or safe location for this facility. Our community of Martin’s Point residents and small business in the vicinity should not endure the increased noise, transiency, transportation congestion, and resultant security concerns arising from the proposed turnover and transit of large numbers of non-residents. The environmental impact on precious infrastructure, waste and waste water increases, and services required by a dense housing location must be carefully analyzed by the County. Serious consequences for competing services during emergencies and evacuations increase the risks for our residents and the surrounding communities. The State Access road at Martins Point is already stressed and we cannot add to the risks of response times.

Having spent nearly fifty years working in preventing threats to public health (at the Centers for Disease Control), I want to share my personal concerns about the development of a community facility such as the one described. I have seen first hand how housing impacts global health in third world countries, and the proposal fits into that category. My concerns arise from health threats to the individuals who are asked to live in this facility, and the likely increased risks of communicable or lifestyle diseases. This concern extends into the community when residents become ill, go to work, seek services, or encounter others. The increased demand for health services creates a new impact. I provided Public Comments to this effect when this matter came before the Southern Shores Town Council last year.

We support safe and affordable housing to strengthen communities. I deeply respect the needs of these hard-working young people, and they deserve a quality residence. The proposal for 12 residents per bedroom and limited services is not acceptable.

We encourage the Planning Board to deny this proposed amendment and related action.

Sincerely,

Timothy G. Baker, President (Martin’s Point Homeowners Association)





February 22, 2024

To: Dare County Planning Dept.

Ref: Proposed zoning amondment by Patricia Pledger

We live at 1001 Martin's Point Rd. and 1004 Creek Rd., respectively. Our side yards are directly across the road from the Martin's Point commercial properties.

We do not want to see any zoning changes in this area which would increase noise and security concerns.

We understand the need for affordable housing, but a high occupancy dwelling such as that being proposed by Ms. Pledger should not be located next to a quiet residential neighborhood, especially when the occupancy across the properties could be tens or hundreds of non-resident young people, here for the summer.

Sincerely,

Joe Watson

1001 Martin's Point Rd.

Donald Newell

1004 Creek Rd