

# CAROLINA BEACH

Planning and Zoning Minutes  
Thursday, August 8, 2019 @ 6:30 PM  
Council Chambers  
1121 N. Lake Park Boulevard  
Carolina Beach, NC 28428

## ASSEMBLY

The Town of Carolina Beach Planning and Zoning was held on Thursday, August 8, 2019 at 6:30 PM at Council Chambers.

PRESENT: Deb LeCompte, Mike Hoffer, Melanie Boswell, Jerry Kennedy, and John Ittu

ABSENT: Keith Bloemendaal and Wayne Rouse

ALSO PRESENT: Director of Planning & Development Jeremy Hardison

### . CALL TO ORDER

The meeting was called to order at 6:30 p.m. by Commissioner LeCompte.

### . APPROVAL OF MINUTES

Planning & Zoning - July 11, 2019 Meeting Minutes.

- a. Commissioner Ittu made a motion to approve the minutes.  
Commissioner Boswell seconded, all were in favor (5-0).

### . STAFF REPORT ON RECENT COUNCIL MEETINGS

Mr. Hardison reported that the next Council Meeting will be August 13, 2019.

There are a few items on the agenda, one that this commission heard last month regarding rezoning the applicant has pulled her application from the agenda. She realized her issue wasn't single family versus duplex homes that could be built but her biggest concern was where are the short-term rentals allowed. The Baptist church off Lake Park and Wilson requested a portion of the block to become one way turning onto Wilson because of the unsafe turn off of Wilson. Clarifying under the public nudity ordinances of bathing suits and what is allowed and what is appropriate. There is a special event being requested for a beach soccer tournament on the beach strand near the boardwalk on September 17 and 18. Approximately 5 fields from the Marriott to the Hampton Inn.

### . STAFF REPORT ON RECENT DEVELOPMENTS

Mr. Hardison reported on the recent activities in the Planning and Development Department.

#### **Staff Update - August 8, 2019**

#### **Permitting**

35 Permits (renovation, repair, grading, additions)

2 Residential New Construction

2 Demolition  
9 Certificates of Occupancy

**Code Enforcement**

20 Complaints Received  
9 Resolved

**New Business -**

Fork & Cork is getting close to a final.

The Spot - 1006 Lake Park Blvd South they are cleaning the building up and should be opening soon.

At Publix there will be 2 new businesses opening - one is Ocean Nails and the other will be the relocation of Salty Chic which is currently at the Food Lion shopping center.

LUP Steering Meeting is August 21st and depending on that meeting we will then know when this board will hear this for consideration.

**Special Event -**

Life Rolls On - August 11th

Womparama - August 17th

As our summer comes to an end we will have fireworks and movies at the lake till the last week of August. The CB Market at the lake will continue till the end of September. The first weekend of September is Rock The Beach Festival at the boardwalk on the beach strand.

**Coming Up -**

CUP - Springhill Suites - 1341 LBPN

CUP - 2-Unit PUD - 504 Keys

CUP - Multi Family - 402 LPBN

Text Amendment - PUD in NB Zone between the lake and Carolina Sands

Text Amendment - Private Parking lots for profit

**PUBLIC DISCUSSION**

No one signed up for public discussion.

- a. Conditional Use Permit Modification - Hurricane Alleys - 5 Boardwalk  
Mr. Hardison reported on the CUP for 5 Boardwalk/Hurricane Alley - Bar/Tavern.

The applicant is Mr. David Cole this facility was classified as a bar in 2014.

Hurricane Alley's

- Reclassify from a restaurant to a Bar/Tavern in 2014
- 1,700 sq. ft. Building
- Serves Alcohol and food
- Existing second story deck and patio service area
- Proposal is for a roof top bar and seating over the existing building.
- The hours of operation 11:00am – 2:00am.

Survey shows that the second story deck is on his property the floor plan and seating plan shows the proposed set of steps leading up to the rooftop bar this will tie into the second story deck.

There is a portion of applicant's patio that he agreed to grant the town an easement for the public use. The rear of the building is currently vacant property.

Specific Standards - Applicant must make provisions for:

**(1) Pedestrian safety, Ingress and egress**

- There is only pedestrian access to the property.
- March 2012 the applicant agreed to dedicate a access easement to the town (in front of deck).
- Tables will need to be situated as to not block the ingress and egress.

**(2) Parking**

- There is no vehicular access to the property. CBD parking is waived.

**(3) Refuse**

- Refuse collection agency is handled collectively by the boardwalk area businesses.

**(4) Utilities**

The impact on utilities and the environment will be the same.

**(5) Landscaping**

- Landscaping requirements only apply to new development or expansions.

**(6) Signs**

- A sign permit must be obtained for any new signs located on the property.

**(7) Setbacks**

- The structure was built in 1953 and covered the majority of the lot.

General Conditions:

**(1) Public health or safety**

- The Alcohol regulated by the ABC commission to ensure health and safety issues are addressed. Inspections are ongoing.
- A barrier between the outside patio and the sidewalk with proper signage approved by the police department stating no alcohol beyond this point.

**(2) Meets conditions and specifications;**

- Town staff has reviewed the proposal to ensure it meets all code requirements.

**(3) Value of adjoining or abutting property**

- The use as been open since 2012 and the town has not received any complaints from the adjoining or abutting properties.

**(4) Town land use plan and policies.**

- Located in the Commercial 2 Land Classification Area as described in the 2007 Land Use Plan, this area's predominant uses will be for tourist and family-oriented retail and services, with other considerably less vehicle-dependent commercial businesses such as offices, commercial lodgings, restaurants, and entertainment. It is therefore staffs opinion that this use is in general conformity with the 2007 LUP.

Planning & Zoning Commission

Staff recommends to approve the CUP as defined that it does meet the 7 specific standards and the 4 general conditions. That the location and character of the use if developed according to the plan as submitted and approved will be in harmony with the area in which it is to be located and in

general conformity with the town Land Use Plan and policies.

**Questions for Mr. Hardison**

Commissioner LeCompte asked if this was just a restaurant we wouldn't have this CUP before us. Mr. Hardison replied in 2009 we modified the language but that is correct, it would not have to go before P&Z if it was strictly a restaurant.

Commissioner Kennedy asked in 2014 was there an agreement or condition for the easement and if an agreement, was that satisfied. She is concerned if this wasn't met. Mr. Hardison added that it was a condition agreed upon but there hasn't been an easement document recorded but the applicant allowed the sidewalk to be for public access.

Ned Barnes resides at 814 Carolina Beach Ave North, Carolina Beach he is representing the applicant David Cole. They have requested the CUP as to improve and enhance the existing structure and the patrons are in favor of this as well. There will be no change to the footprint nor has the 7 Specific Standards changed or the 4 General Conditions, everything will remain the same as in 2014 when the CUP was granted. There have been no complaints since they opened.

Commissioner Kennedy asked about the sidewalk whether there was a document regarding the easement and if the applicant was to sell this property that would be null and void.

Mr. Barnes stated no there are no documents and if sold they would have to address that at that time. He also stated that there was nothing directed from the town's attorney regarding this.

Commissioner Kennedy would like to know why did the condition for the sidewalk go by the way side and not have any type of document that would support this. Feels this is honored but not legally binding. She would like clarity if this was an agreement or condition.

David Cole resides at 205 Greenville Ave, Carolina Beach. In 2012 which was with the previous owners it was brought up but it was verbal, it is private property not public property and he agreed that he would leave it open but can't guarantee that if it sells to someone else.

Commissioner Kennedy is concerned about issuing CUP's with conditions or assumed conditions that have never been followed up.

Mr. Hardison added if the commission chooses they could put a condition that say prior to any permits being issued for rooftop construction that an easement would actually be recorded other than an agreement.

Commissioner LeCompt asked so if it is a condition of the CUP it's already a condition and we would require it not to be blocked, then that is the condition of the CUP, correct. Mr. Hardison replied yes but if you wanted stronger teeth moving forward we can actually record an easement.

Commissioner Hoffer if it stopped being a restaurant or bar and the new owner wants to do something else and the easement is recorded it's forever because it goes with the property it doesn't go with the business in the property, correct. Mr. Hardison replied yes and the bar use would go with the property as well it goes with the land not the owner.

Mr. Barnes wants to make a suggestion is possibly have a conditional easement as long as they continue to operate in the matter that they do and continue to own it the easement will exist and if in the future there is a desire to sell there could be language in the easement to cause it to terminate or language to that effect. Mr. Cole has no intention of blocking the sidewalk. To make a legitimate point that was a condition of the CUP to 2014 that the area remain open and not be blocked.

Commissioner LeCompte closed the public hearing.

Commissioner Kennedy asked for clarification that the packet says the agreement was never satisfied. What does the CUP that he has today and since 2014 say about the sidewalk and 5' of his property. Mr. Hardison responded correct he looked back and didn't see where an easement has been recorded for that area. But if the area was not opened to the public then it would be a violation of the CUP where as it should be open to the public as an agreement.

Commissioner Ittu stated that if Mr. Cole would give up his ability to do anything with the 5' property. Mr. Hardison replied it would be used for egress or the public. Commissioner also asked would he be entitled to compensation if he agreed to an easement.

Mr. Cole replied in 2010 he had the drawing for the deck and changed everything to meet and help the town. He could have went out further but he did everything the town asked him to do and built it exactly how they told him and screwed himself on it. He's still going to leave it open he said he doesn't see any other people do what he did. Stated that the mayor said that "we'll just eminent domain and take it from you".

Commissioner Kennedy is concerned that if the next mayor would try to eminent domain feels something needs to be finalized. That is your private property and as long as you keep it open for the public the town can not say that if it's your prerogative that you must do that. Mr. Cole added that there are other private properties that the town thinks it's theirs and it's not.

Commissioner Hoffer stated as it stands it's ok it's a condition of the CUP and if he were to block that off it would be a violation. He is not comfortable with forcing an easement and in the future there's an access easement across your property, he doesn't think it's necessary.

Commissioner Ittu feels it is not necessary either. He has been to the establishment and said it's very well traveled area and feels there's never been an issue with pedestrians.

Commissioner Kennedy stated to Mr. Cole that this is a condition of the CUP and if you choose to block it then your CUP would be in jeopardy and she doesn't think that's the way it should be and she's leaving it at that. She agree easements are something she doesn't like.

Commissioner Boswell doesn't agree with putting an easement either it's his private property and has done the right thing and said he will continue to leave it. If there is a violation then it can be address then as well if the property were sold the new owners would have to meet the same conditions. Feels he is looking to improve the boardwalk she doesn't have any problems with it.

Commissioner Hoffer stated he wasn't here in 2012 and feels the town used sloppy language and throwing around easement if they didn't mean it. Said they should use a different word if they don't mean easement.

**ACTION:** Commissioner Kennedy made a motion I make a recommendation to approve the CUP as defined that it does meet the 7 specific standards and the 4 general conditions. That the location and character of the use if developed according to the plan as submitted and approved will be in harmony with the area in which it is to be located and in general conformity with the town Land Use Plan and policies.  
Commissioner LeCompte seconded, all were in favor (5-0).

Vote: UNANIMOUS

- b. Text Amendment – Considering amending Article IX. - Development Standards For Particular Uses, Mixed use commercial-residential regulations to review the commercial sq. ft. requirement when located in a V-floodzone. Applicant: Jeff Stokley

Mr. Hardison reported on the proposed change on the ordinance and how we look at a mixed use building or what is required on the ground floor for commercial space.

#### **Current Ordinance**

(s) *Mixed use commercial-residential.* The purpose of the mixed use commercial-residential development is to accommodate mixed use buildings that **preserve** and limit the **ground floor or first habitable floor** to **commercial uses** with **either commercial and/or residential uses allowed above**. Development is encouraged that exhibits physical design characteristics that include storefronts oriented to pedestrian movement with a decreased reliance on vehicles.

(1) The first habitable floor shall be limited to:

a. A commercial building and use.

b. **Commercial use shall occupy at least 50 percent of the building footprint.**

(2) Mixed use commercial-residential developments located in the CBD shall have the building's front facade and at least one ingress/egress located adjacent to a public right-of-way.

(3) A conditional use permit shall be required if the mixed use commercial-residential development meets any of the following:

a. Mixed use buildings that are cumulatively more than 25,000 square feet of gross floor area.

b. Building height that exceeds 50 feet.

There is a building being constructed now which is a mixed use building where 95% of the ground floor will be for commercial use and residential units above.

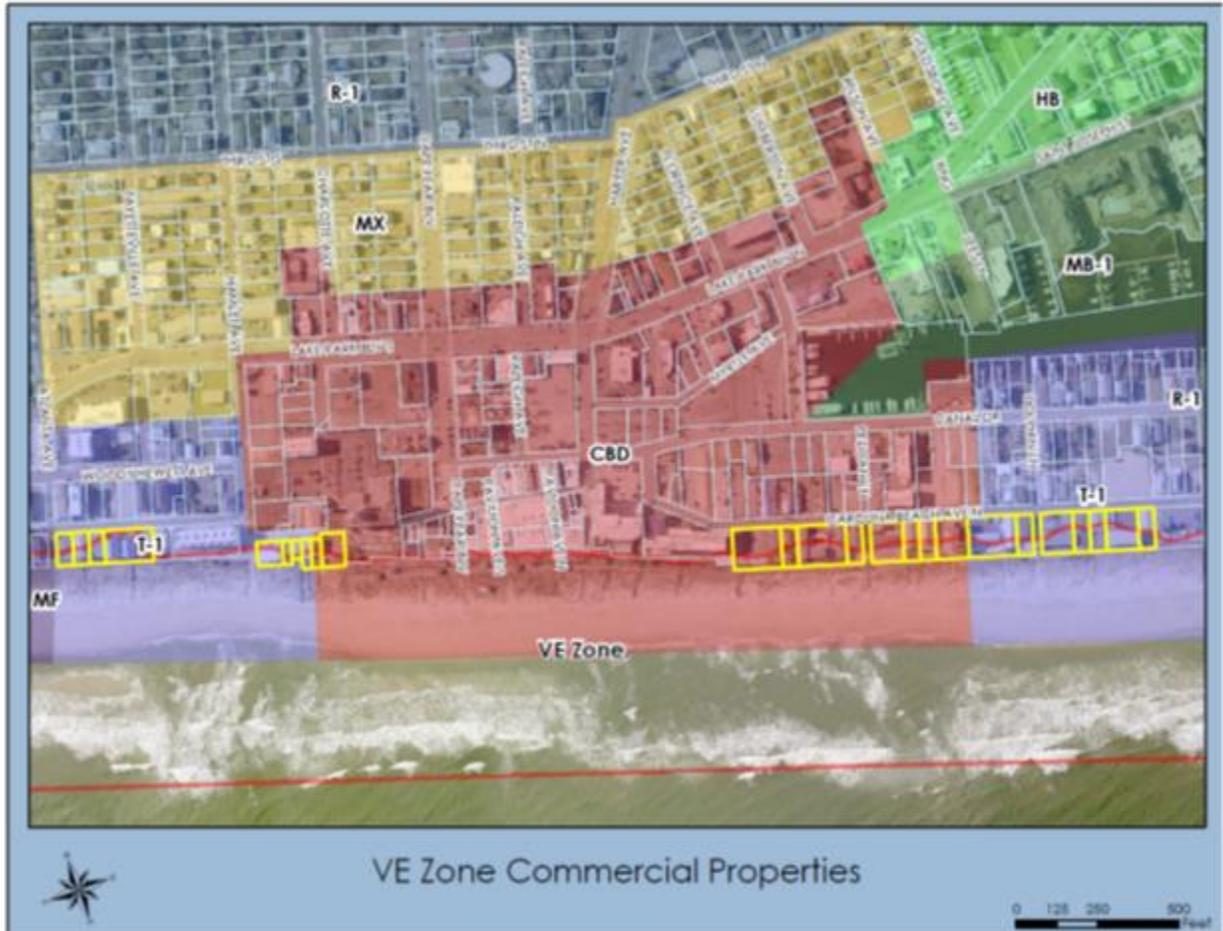
#### **Proposed Ordinance:**

#### **ARTICLE IX. - DEVELOPMENT STANDARDS FOR PARTICULAR USES**

Sec. 40-261. - Development standards for particular uses.

(s) *Mixed use commercial-residential.* The purpose of the mixed use commercial-residential development is to accommodate mixed use buildings that preserve and limit the ground floor or first habitable floor to commercial uses with either commercial and/or residential uses allowed above. Development is encouraged that exhibits physical design characteristics that include storefronts oriented to pedestrian movement with a decreased reliance on vehicles.

- (1) The first habitable floor shall be limited to:
  - a. A commercial building and use.
  - b. In a VE flood zone the commercial use shall occupy at least 25 percent of the building footprint.
  - c. In AE or X flood zones the commercial use shall occupy at least 50 percent of the building footprint.



The proposed text amendment to reduce the ground floor commercial area requirement for commercial mixed use buildings.

Commissioner LeCompte made a motion to open the public hearing.  
All were in favor (5-0).

JC Woddle resides at 3313 Amber Dr, Wilmington and Steve Neamire resides at 5304 (INAUDIBLE). Mr. Woddle is an architect working on one of the properties that fits the description regarding this. The VE and AE designation is in the middle of the area where he can build in which means half of his footprint can not be built on the ground level and yet he is required to have half of the footprint commercial. The issue is the stairs and elevator which services the 2nd, 3rd, and 4th floor take up a certain amount of space which makes it impossible to meet the ordinance. He is working with the planning department to come up with some verbiage so he can make it possible to meet the ordinance because the commercial use is important to the town. With the proposed ordinance some will be rewarded

more and some less for the 25% reduction which will make it a clean calculation it is still challenging to meet the requirement but they are able to do it.

Steve Neamire spoke and stated he is Jeff Stokly's partner for 32 years they have been working with the town due to the current regulation he feels this is going to be difficult to pull this off. They are proposing to put commercial space on the lower level and residential condos above that. They just finished Stoke restaurant and presently working on Naughty Dog's/Jack's Retreat. They both have lived here and plans are to help the town and the economy. Feel they can't get around this because no one is going to rent commercial space on the 16' in the air, would like to find some middle ground to work with, he wanted to thank the board for their consideration.

Commissioner LeCompte closed the public hearing.  
All were in favor (5-0).

Commissioner Hoffer asked Mr. Hardison the scenario with a small lot in the VE zone and having to slice through it with basic utilities and needs that you have to have so what they are proposing is to use less of the space for commercial from 50% to 25%. Mr. Hardison replied correct with this proposal the commercial space is smaller but it is only limited to a few properties in the VE zone. If in the commercial zone and in a VE zone but didn't want to use the ground level is that an option. If you are in the CBD in a mixed use building you would have to go to the 2nd floor and 50% would have to be devoted to commercial. You are limited because you would be in the flood zone and once you are above flood level and the flood requirements are satisfied then you can use 50% but it would be 2nd story commercial space.

Commissioner Kennedy stated that with this we are decreasing the minimum and you can do what ever you would like with the rest of the space as long as it's within the guild lines of that zone , correct. Mr. Hardison replied correct.

Commissioner LeCompte stated that the current ordinance is in conflict with the flood zone is that correct. Mr. Hardison it is and the flood maps were changed last year and the ordinance was prior to that. So with the properties being redeveloped and with the flood maps and how it does impact the properties with the existing ordinances.

Commissioner Boswell asked was this area affected by the August 28th flood map. She asked are the 25 properties required to build above the base flood elevation. Mr. Hardison replied all of the properties were in a V-zone and now only a portion are. If they are in a V-zone they would be required and if in the A-zone a portion of the properties could be flood proof.

Commissioner Hoffer asked what if someone wanted to build a restaurant on the top floor and residential below. Mr. Hardison replied they can build a restaurant on the top and would have to devote the first floor as commercial or 50% of that space. Commissioner Hoffer supports this as written.

**ACTION:** Commissioner Boswell made a motion to approve whereas in accordance with the provisions of the NCGS, the Commission does hereby find and determine that the adoption of the following ordinance amendment is consistent with the goals and objectives of the adopted Land Use Plan and other long range plans.  
Commissioner Kennedy seconded, all were in favor (5-0).

Vote: UNANIMOUS

. **DISCUSSION ITEMS**

Commissioner Kennedy asked because of this situation regarding the flood zones is there something that the town should look at to address this type of situation regarding the text so as to not have to go through this every time.

Mr. Hardison responded there are a lot of mixed use buildings proposed in the CBD and there would be issues to change the V-zone line, but there are ways to design the building to meet the requirements.

Mr. Murphy added there are just the 25 commercial properties and the rest of the V-zone is primarily multifamily and residential.

Commissioner Boswell asked are the 25 properties occupied. Mr. Murphy replied yes and no some north of the boardwalk are uninhabited at this time. Mr. Hardison added there is about 400 feet of beachfront that is being demolished. Commissioner stated so that the town could consider using 25% to be in anywhere in the building other than the ground floor. Mr. Murphy replied we could but with the mixed use language it's considered that most properties are not going to use other floors other than the first floor for commercial use.

. **NON-AGENDA ITEMS**

. **ADJOURNMENT**

Commissioner LeCompte made a motion to adjourn at 7:30pm.

Commissioner Ittu seconded, all were in favor (5-0).