

CAROLINA BEACH

Planning and Zoning Minutes
Thursday, November 8, 2018 @ 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, November 8, 2018 at 6:30 PM at Council Chambers.

PRESENT: Keith Bloemendaal, Deb LeCompte, Mike Hoffer, Jerry Kennedy, Wayne Rouse, and Melanie Boswell

ABSENT:

ALSO PRESENT: Assistant Director of Planning & Zoning Jeremy Hardison and Assistant Town Manager Ed Parvin

. CALL TO ORDER

Meeting was called to order at 6:30 p.m. by Chairman Bloemendaal.

. APPROVAL OF MINUTES

a. Planning and Zoning - August 9, 2018 Meeting Minutes.

Commissioner LeCompt made a motion to approve the minutes.
Commissioner Rouse seconded, all were in favor (6-0).

. STAFF REPORT ON RECENT COUNCIL MEETINGS

Mr. Parvin reported on the most recent Town Council Meeting which is coming up on November 13, 2018. There aren't any items on the agenda from the Planning Department, due to the Hurricane, we haven't had any meeting since August.

. STAFF REPORT ON RECENT DEVELOPMENTS

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

. Public Comment

No one signed up for public comment.

. PUBLIC DISCUSSION

a. Conditional Use Permit: Conditional Use Permit at Carolina Beach Marina and Yacht Club to operate a floating bar located at 401 Marina St. Pin # 313115.64.8036.000 Applicant: Carolina Beach Yacht

Club and Marina

Mr. Hardison reported on the CUP for Carolina Beach Yacht Club and Marina. This will be for an expansion for a barge and boat docks as well as adding an on premise bar for alcoholic beverages. Existing uses at this time are a 69 boat slip marina, store and a residential unit above the store, fueling and an existing off-site 56 space parking lot.

The applicant, Carolina Beach Yacht Club and Marina, is requesting a Conditional Use Permit (CUP) to add on premise alcohol at the marina. Carolina Beach Yacht Club and Marina, formally Joyner Marina and Oceana was recently purchased. The Marina is located at 401 Marina St. and is in the MB-1 zoning district. The property currently has a two-story building that contains an office, retail and a residential unit. There are 69 existing wet boat slips associated with the marina. The applicant would like to install a 40' x 120' barge on the east of the existing fuel docks to expand the marina store to the barge and erect a 40' X 16' building that will contain a concession stand, dockhand office, retail and a horseshoe bar that will provide hot dogs, sandwiches, beer and wine. An establishment that is serving on-premises alcohol that is not a standard restaurant is classified as a bar. Bars can be approved under a Conditional Use Permit in the MB-1 zoning district. The barge will be register as a vessel with the NC wildlife. The applicant is also expanding the fuel docks by 160' X 12' to the north and will provide two more additional gas fuel dispensers. The existing building will be utilized as an office and storage with an existing residential unit above. The property is located in a flood zone.

Specific standards. Applicant must make provisions for:

(1) Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;

No change is proposed to access the lot. There is an existing drive to get to the marina and an additional approved parking lot inside the gate of Oceana Subdivision that accommodates the boat slips. They are proposing to access 13 newly designed parking spots off the connector road between Florida Ave and Georgia Ave. This area is designated as an access easement right-of-way as shown on the attached easement plat.

(2) Off-street parking and loading areas where required, with particular attention to the items in (1) above and the economic, noise, glare, or odor effects of the conditional use on adjoining properties and properties generally in the district;

The required parking is provided below

Parking requirements

Existing Boat Slips – 69, 1 per boat slip = 69 spaces

Proposed retail space – 320 sq. ft., 1 per 200 sq. ft. = 1.6

Eating & Drinking Establishment - 320 sq. ft. of inside, 1 per 110 = 2.9

2,600 sq. ft. outdoor, 1 per 220 sq. ft. = 11.8 spaces

One residential unit - 1,200sq. ft. = 1 per 1,000sq. ft. = 1.2

Office space - 600 sq. ft., 1 per 300 sq. ft. = 2

Existing retail in building - 933 sq. ft., 1 per 200 sq. ft. = 4.7

Existing parking = 81 spaces

Proposed additional parking = 93.2 spaces = 94 spaces

Total parking provided = 95

(3) Refuse and service area, with particular reference to the items in (1) and (2) above;

Trash and recycling containers will service the site and will be enclosed.

(4) Utilities, with reference to locations, availability, and compatibility;

The new building will connect to the existing utilities and no upgrades are required

(5) Screening and buffering with reference to type, dimensions, and character;

The addition will require additional parking spaces. A landscape buffer is required for those new spaces along the Town's right-of-way easement.

(6) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;

No additional signage is proposed

(7) Required yards and other open space and preservation of existing trees and other attractive natural features of the land;

No new upland structures are proposed

General conditions.

(1) That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved by the issuance of the C.U.P.;

The use has served as a commercial marina for 25 years serving the boating community. This is the first time they will be offering on-premise alcohol. They will be serving by the water and will be over 330 feet from the residential district. The minimum requirement is 200 feet from any residential district.

(2) That the use meets all required conditions and specifications;

After review by staff the plan has been determined to meet all conditions and specifications except for the landscaping requirements by the additional parking spaces.

(3) That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and

The proposed use is in keeping with the character of the MB-1 area.

(4) 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

The desired Future Land Use of the Marina Mixed Use area includes commercial uses that includes water-oriented restaurants and services

No Questions for Mr. Hardison

Public Comment -

Ned Barnes resides at 814 Carolina Beach Ave N. spoke for the Marina and is in favor of the CUP proposal he feels all the requirements have been met. Applicant: Chad Cook resides at 20607 Bethel Church Road, Cornelius, North Carolina.

James Sanders resides at 418 Marina St - spoke he was not aware of this CUP until about a week ago. He is not happy that there is a marina - feels that this is not conducive to a residential area. Shows map boards of the existing area. Feels the parking needs to be corrected. They have a lot of issues with the existing permit. In summary we want this to be in harmony with our area, at present this is a marina in a residential area. Would like the existing agreement to be right before we get into another one.

Alan Perry resides at 403 Marina St. which is 410 feet from the marina. He is not happy with this

CUP - and is totally against it. States a few issues he has - dumpster placement - after 25 years of being a marina why start consumption on the premises now - the barge is huge with outside seating - cooking and the smells will be blowing onto his front porch - he is concerned with the drinking aspect. Asked how many days in advance is the public to be notified of a meeting? Mr. Hardison replied 15 days. He feels they had no chance to prepare for this.

Nick Habash resides at 308 Florida his main concern is storm water run off. There is storm water issues when it rains even a small amount we end up with a river by my property and there is no storm water system to catch it.

David Smith lives and has a business on the island he is against this and does not want this to pass. Is concerned about boating and the consumption of alcohol - area is not lighted well enough - asked the members to consider what he has mentioned.

Mel - lives at 309 Georgia Ave. - feels that the marina has not been kept up and there is no pride in the marina community, it's an eye sore and doesn't want to see what it could look like if this is approved along with, the noise the trash and the traffic. Loves Carolina Beach and is here because he wants to be here. He is totally against this.

Gerald DeMaio resides at 426 Oceana Way - we have made this our home and would not have purchased our property if they knew this would be happening. He is concerned with the light and noise pollution and how the property would be run. He's asking that the members greatly consider this with a lot of thought and really look at how this would impact the community of Carolina Beach.

Elizabeth Burton resides at 400 Virginia Ave - is on the board of directors and feels she represents most of the people in Spinnaker Point. She feels this would greatly impact them and having a barge there is not what we want. Has had issues with the marina people telling the folks they can use their (Spinnaker's) privately owned facilities. They are a private/gated community and wants to stay that way.

James Sanders 418 Marina St - brags about CB - it's quiet and peaceful. He lives in a residential area but it's more like a commercial area. In addition to his previous concerns is the noise level and the traffic.

Chad Cooke - owner of the marina. He has been working months to improve the marina. They have renovated the docks and restrooms. Believes parking is an issue. They are trying to get this plan approved but everything is in limbo we can't move ahead and then have to change things in 30 or 60 days. He's disappointed that the community feels that they are not trying to improve the marina and that they don't have the residences best interest in mind, they do. The barge is to make the docks more stable, they want to move the ship store closer to the barge to be more convenient for the boaters.

Allen Perry - 403 Marina St. Barge is huge 40X160 feet and feels this will be an issue with noise as well as the amount of people - feels at low tide it will be stuck for some time. Would like the members to take a closer look and don't rely on pictures. There is supposed to be a closed head marina but it is not operating correctly and this is an issue. Bulkhead needs to be addressed.

Infrastructure needs to be addressed first before any expansions.

David King - 414 Oceana Way - lives in the private/gated community and feels that this is going to increase traffic and will affect the maintenance. The roads and gate are 100% their responsibility so any maintenance gets paid by the HOA.

Gerald DeMaio resides at 426 Oceana Way - If the owners were concerned about the neighborhood and quality of life and to be good neighbors then why didn't the owners approach the HOA's and discuss some kind of plan.

Chairman Bloemendaal made a motion to close the public hearing.
Commissioner LeCompt seconded, all were in favor (6-0).

Questions for Mr. Hardison -

Chairman Bloemendaal asked Mr. Hardison a few questions - is the Oceana neighborhood parking within the marina and beyond the gate and those that would be coming in would need access to the code. This is correct an easement was granted to access the marina inside the gate. Where is the current and future trash to be stored - it's by the fuel tanks. Would they need a CUP if they were only going to serve food and soda - no they would not. Regarding live music - they would have to meet the noise ordinance. Regarding handicapped accessibility is that a requirement - for the improvement as a barge it is not because it is a vessel.

Commissioner Rouse - Is the triangle parking area in the marina zone - it is not - it is a deed with an easement in a residential area. It is considered non-conforming now. What can the marina do by right in regards to a restaurant - you can have an eating establishment, you can have alcohol if you are classified by ABC law as a standard restaurant, which has requirements and there are distinctions between private clubs and restaurants. If there wasn't a barge involved but wanted a restaurant would they still have to go through this process - yes because it would then be looked at as a bar.

Commissioner LeCompte asked are the parking spaces for the Air-b&b - is not aware of any Air-b&b. Someone mentioned there is a boat that is operating as an Air-b&b. There was mention of the Pedal Pub that has 16 passengers, are they also using the marina and was that calculated into the spaces - The parking calculations is based off the number of boat slips. Feels that the marina should have talked with the HOA members and would have been a good start as a courtesy to the community .

Commissioner Kennedy needs clarification on why we are here for the CUP to serve alcohol on premise is that correct - with this proposal yes and they are allowed a CUP.

Commissioner Rouse asked are we here because it's over the water versus inside for a restaurant - they still would have to go through this process either way because they would not be classified as a restaurant by ABC.

Mr. Hardison - you are here to approve or disapprove for a bar on premise.

Commissioner Hoffer asked don't they require hours of operation part of the CUP - they do not and we can not regulate when alcohol is being served and they can serve up to 2am.

Mr. Parvin stated the same, we were told that we can not regulate the sale of alcohol.

Commissioner Rouse staff is recommending approval of this to council correct - Mr. Hardison they meet the specific standards in the ordinance.

Chairman Bloemandaal acknowledged the public and appreciates the comments regarding this issue and giving them feedback. We are regulated by the quasi-judicial rules that we go by the 4 General Standards and the 7 Specific Standards and we approve or disapprove based on those only. Some of the issues that were brought up would have to be taken up with the town as far as enforcement goes.

Commissioner Kennedy added that she feels this is the most compatible and respectful group of opponents she has come across.

Commissioner Hoffer stated Marina St is a private street but the marina owns the parking area which is a deed of easement. Is the parking adequate.

Mr. Hardison this area is looked at as existing and is non-conforming. They are not doing more than substantial improvements so we are looking at the addition and where the parking is going to be located and to make sure that it does conform to the ordinance.

Commissioner Bosewell and Hoffer and LeCompte are reviewing the 3rd picture board from James Sanders.

Chairman Bloemandaal asked about the parking spots on Georgia Ave at the turn, the proposed parking spaces. Mr. Hardison responded they are proposing a gravel parking area.

Commissioner Rouse asked are we to review and/or approve the parking in the private area.

Mr. Hardison that is existing, there is an encroachment into the private drive which would be a civil matter that would be between the marina and the HOA. Staffs position is that those spaces inside the gate are existing.

Commissioner Kennedy this a grand-fathered in piece of property that didn't get completed. CUP is based solely on the right to serve alcohol on premise.

Commissioner Rouse asked if this has gone before any other committee other than TRC - No other just TRC and staff.

Chairman Bloemandaal read over the 7 Specific Standards as well as the 4 General Conditions.

Commissioner Kennedy added that with what the property owners have said there are a lot more issues then what we are voting on.

Commissioner Rouse is going along with what the town is recommending and to let council take a look at all the other factors.

Commissioner Hoffer is against this and feels this is not in harmony with the area.

Commissioner Boswell feels it is not in harmony with the area and would have to vote against this.

Chairman Bloemandaal read - the desired future land use of the marina mixed-use area includes commercial uses that include low intensity water oriented restaurants and services, is this in our Land Use Plan. Mr. Hardison replied, that is correct. Asked both commissioners why this particular isn't in harmony. Commissioner Hoffer responded that's why bars can be approved under a conditional use permit.

Commissioner LeCompte is leaning towards saying no too, does not see how a bar could enhance a residential community. Feels there needs to be a lot of discussion between the marina owner and the homeowners.

Commissioner Kennedy her understanding is they can comply with the North Carolina restaurant regulations and go that way. The only reason its a bar is they don't provide the full kitchen so we don't accommodate a bar but we would accommodate a low key restaurant. If we deny the CUP specifically because of the bar they can have a restaurant in the area. They already have an off premise permit to sell alcohol.

Commissioner Hoffer added the location and character of the use and yes it is subjective and there's a reason why it's subjective. Need to consider the terrain, open water and sound carries if this was in a different area where there would be some trees he might feel a little differently.

After the motion was made at 8:20 the meeting went to break for 5 mins.

ACTION: Commissioner Hoffer made a motion - I move that we deny based on #4 – that the location and character of the use if developed according to the plan as submitted and approved will not 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 Boswell seconded the motion.

This will go to Town Council on December 11th for the final vote.

Vote: 3 to 3

- b. Text Amendment: To amend Chapter 40 Article III Sec. 40-72, Article IX Sec. 40-361, and Article XVIII Sec. 40-548 to allow for the operation of a distillery in the Highway Business (HB) Zoning District (Commercial 1 – 2007 LUP) of the Town of Carolina Beach - Applicant Max Sussman

Mr. Murphy reported on the Text Amendment for the distillery. Applicant is asking to amend the text amendment.

Background: Max Sussman approached the Town of Carolina Beach in August to inquire about the

opening a distillery to sell a Carolina Beach themed rum. Planning Staff informed him that current zoning ordinance did not allow for that use and that he would be required to apply for a Text Amendment in order for the activity to be permitted in the Town. Mr. Sussman submitted his application (Attachment 1) on August 30th, 2018 intending to be reviewed by TRC in September. Unfortunately, due to Hurricane Florence September TRC was unable to meet, so Mr. Sussman's Text Amendment proposal was not able to be heard until October.

In October, Staff met with Mr. Sussman to hear his proposal to amend Chapter 40 Article III Sec. 40-72, Article IX Sec. 40-361, and Article XVIII Sec. 40-548 to allow for a distillery to operate only in the HB zoning district in the Town of Carolina Beach. This is the commercial zoning district which runs along North Lake Park Boulevard from the Bridge to Wilson Avenue. Staff informed him that, in addition to amending the Zoning Ordinances, he would also have to follow the guidelines set forth for the operation of a distillery in **§ 18B-1105** (Attachment 2.1) and **§ 18B-1114.7** (Attachment 2.2), apply for an ABC Commercial Permit (Attachment 2.3), and adhere to any other State, County, or Local restrictions on Distilleries.

It should be noted that distilleries are opening around the state and they are all handled slightly differently, but most cities, counties, and municipalities place the majority of the enforcement and management back on the State/ABC (Attachment 2.4). For instance, Kinston, the home of Mother Earth Brewing, simply directs the use back to G.S. 18B-1105. Manteo and Durham both place a limit on the maximum annual sales for a craft or micro distillery, but have no other specific restrictions. Some examples of recent distillery news can be found in Attachment 2.5.

Several changes have been made to the guidelines for Distilleries and associated activities (Attachments 3 and 3.1) which open up more opportunity for small-scale distilling operations to succeed. The "Brunch Bill" adopted on June 30th of 2017 allowed for the annual sale of 5 bottles to one consumer in a 12-month period, as opposed to the 1 bottle allotment previously allowed. This change has made craft or micro distilleries more economically viable.

Staff Recommendation:

Staff recommends that the use of Distillery be added as a by-right use in the HB Zoning District as it is in line with the current LUP and Zoning Ordinances of Carolina Beach. Staff recommends placing no additional restrictions beyond those already placed upon them by NC G.S. and the ABC, and the Zoning Requirements placed on every development in the HB zoning district.

Questions for Mr. Murphy -

Commissioner Kennedy asked could they expand if needed - yes they could do that but it would have to be amended.

Chairman Bloemandaal asked the sale will be allowed but not the consumption, correct - that is correct and tastings will be permitted, which would be Rum only. If approved the applicant could distill whatever liquor they so desired, correct - yes sir, it is not limited.

Chairman Bloemandaal made a motion to open the public hearing.
All in favor (6-0).

Applicants: Max Sussman - 833 Settlers Lane and Chris Stellaccio - 781 Settlers Lane - the building inspector has been helpful in guiding them along with Miles reaching out to us. Everything they plan to do is within the state laws according to Chief Spivey. One, ounce per spirit once a day is

allowed and can only sell 5 bottles per person per calendar year which will be registered on a state form and they will have to track ID's. They are not looking to be a bar or add one but what they have done was created a craft and would like to share it with the island and they feel it would be a good addition.

Chairman Bloemandaal asked how would this work logistically.

Chris Stellaccio responded it would have to be sold in the same location which they are still doing research to find one. He shared the reason for choosing Rum, one being there is no waste in distilling this liquor so what is not consumed they can use to clean the equipment.

Chairman Bloemandaal made a motion to close the public hearing.
Commissioner Rouse second all in favor (6-0)

Commissioner Rouse asked if staff is recommending this - Miles responded yes, they are.

Commissioners Discussion - manufacturing a product/it's another example of innovation and nice to see it coming to our island/feels this is a good thing that we need to expand into this type of business.

ACTION: Chairman Bloemandaal made a motion that we approve the text amendment to Chapter 40 Article III Sec. 40-72, Article IX Sec. 40-361, and Article XVIII Sec. 40-548 to allow for the operation of a distillery in the Highway Business (HB) Zoning District by right it's in consistent in goals of the objectives of the adopted Land Use Plan and other long range plans.
Commissioner Rouse seconded the motion.

Vote: (6-0)

- c. Tabled - Text Amendment: Consider a text amendment to Chapter 40, Article III Sec 40-73 Dimensional Standards for the various zoning districts to amend yard requirements for structures exceeding maximum height regulations and amend of the 2007 CAMA Land Use Plan Policies.
Applicant: Charles Poindexter

Applicant was unable to attend

ACTION: Chairman Bloemandaal made a motion that we table Text Amendment to consider a text amendment to Chapter 40, Article III Sec 40-73 Dimensional Standards for the various zoning districts to amend yard requirements for structures exceeding maximum height regulations.
Commissioner LeCompte seconded the motion.

Applicant asked for the item to be tabled until December 13, 2018 due to a prior appointment out of town.

Vote: (6-0)

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NON-AGENDA ITEMS

Chairman Bloemandaal wanted to discuss the information that he received regarding the P&Z Board being represented at the monthly Town Council meeting. Commissioner LeCompte and Rouse have volunteered, at least one of them will need to attend the monthly Town Council meetings. Commissioner LeCompte will not be able to attend Novembers meeting.

Commissioner LeCompte asked for updates on Publix

Mr. Hardison updates on Publix - they are trying to get the building permit issued, they had to revise their drawings to the building inspector, finalizing some drainage issues with water/sewer, they have finished the asbestos removal and they are planning on demoing next week.

Chairman Bloemandaal asked about the old Harris Teeter site regarding a rumor he heard - somebody wants to go back to a residential site.

Mr. Hardison replied yes he has heard that but it is zoned as commercial. Nothing has been submitted at this time.

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ADJOURNMENT

Chairman Bloemandaal made a motion to adjourn at 8:50 p.m.

Commissioner LeCompte seconded the motion, all were in favor (6-0)