



CAROLINA BEACH

PLANNING AND ZONING MEETING

MINUTES • OCTOBER 13, 2016

Council Chambers
Regular Meeting
6:30 PM

**1121 N. LAKE PARK BLVD.
CAROLINA BEACH, NC 28428**

1. CALL MEETING TO ORDER

2. APPROVAL OF MINUTES

- a. Planning and Zoning - Regular Meeting - Sep 8, 2016 6:30 PM

Chairman Reynolds noted two typos under Public Discussion. Byrd Vs. Franklin, Byrd is spelled with a 'y' not an 'i'. The sentence that reads "reactive rather than reactive" should read "proactive rather than reactive".

Commissioner Toppin addressed for the record that Harry Buie's house was not condemned.

Commissioner Bloemendaal made a motion to approve the minutes as corrected and it was seconded by Commissioner Cottrell. The minutes were approved as corrected (7-0).

3. STAFF REPORT ON RECENT COUNCIL MEETING(S)

Mr. Parvin presented on recent Town Council Meetings.

Town Council approved the text amendment for sidewalk cafes with no change in allowable encroachment. Council directed staff to enforce business owners bringing in cafe seating at closing time and also extended the operating hours until midnight with the allowance of alcohol to be served until 11:30pm.

4. PUBLIC DISCUSSION

There was no public discussion.

5. DISCUSSION ITEMS

- a. Text Amendment: Consider amending Chapter 40 Sec. 40-72, 40-150, 40-261, 40-548 and Chapter 18 Sec. 18-7 to address standards and allowance for aircraft takeoff and landing zones. Applicant: Town of Carolina Beach

(Requested by Jeremy Hardison, Planning and Zoning)

Chairman Reynolds asked Mr. Hardison for clarification if currently an emergency helicopter could land in Carolina Beach. Mr. Hardison responded yes. Chairman Reynolds asked if these regulations applied to drones. Mr. Hardison answered that the proposed regulations do not take remote control devices in to account.

Chairman Reynolds asked how many of the helicopter tours in the area were based at an airport. Mr. Hardison responded that most are. The facility in Myrtle Beach is the only one that is not located at an airport.

Commissioner Grady asked if there was a particular reason why the area currently zoned Industrial was zoned that way. Mr. Hardison explained that at one time it was

where the Carolina Glove factory was located, a manufacturing facility. Commissioner Grady asked if it was required by the state to have an Industrial zoned area. Mr. Hardison answered that it is not but there are several land uses required to be allowed.

Commissioner Bloemendaal asked if state statutes required any specific manufacturing uses to be allowed. Mr. Hardison and Mr. Parvin responded that they were unaware of any.

Commissioner Toppin asked for clarification if there was a provision under Sec. 18-7 item c that would allow for commercial aircraft to land. Mr. Hardison clarified that the provisions were for governmental purposes only.

Commissioner Kennedy asked for a synopsis of what had been submitted to the Town that prompted this amendment. Mr. Hardison explained that a zoning permit for a helicopter tour business was submitted to the Town. The application was denied based on the associated use (amusements) being permitted by CUP only in the HB zoning district. The Applicant wanted the application to be reviewed under a different land use. Staff disagreed with the Applicant's interpretation and gave the applicant three options for moving forward under the amusements use; appeal the decision to the BOA, apply for a text amendment, or apply for a CUP. An application for a CUP has not been applied for.

Commissioner Kennedy asked if those options were grandfathered in if this amendment was approved. Mr. Hardison explained they would be grandfathered under the amusement use if they put in an application for a CUP prior to Town Council approval of the proposed ordinance.

Commissioner Kennedy asked if the Federal Government could put in an airstrip without Town permission. Mr. Hardison answered yes. Commissioner Kennedy asked if the allotted area where a landing zone could be permitted if larger aircraft could land. Mr. Hardison responded that the strip would have to meet FAA regulations but he believes there would be adequate room to do so.

Commissioner Cottrell made a motion to open the public hearing. It was seconded by Commissioner Bloemendaal. All were in favor (7-0).

Brett Keeler, 917 Colonial Circle. Feels that by allowing the use by a conditional use permit would essentially be allowing it by right. Will put the burden on the tax payer to assemble expert witnesses to disprove the four general conditions and seven specific standards. Feels there will be large impacts for the R-3 zoning district due to landing path. Disagrees with Staff on whether this amendment is consistent with the goals and objectives of the Town's land use plan. Helicopters are not conducive to a relaxing environment. Does not feel the use fits into uses listed in the Land Use Plan to be located in the Industrial Zone.

Kathy Long, 1029 Bennett Lane. A builder in Carolina Beach and also a real estate agent. Described the noise made by landing and taking off helicopters to be noise pollution.

Carla Schoonmaker, 404 Fern Creek Lane. Wanted more details on the type of operations to possibly be run out of the industrial zone. Also wanted to know how the height restrictions would be enforced. Ms. Schoonmaker feels the amendment would open the door to attract more businesses like it. Ms. Schoonmaker feels the allowance by CUP overrides the rights of the Town's citizens.

Mike Devlin, 1002 Bennett Lane. Questioned why anyone would want to operate a helicopter in a confined space landing zone. The FAA requires a minimum altitude over a congested area to be 1,000 feet. Mr. Devlin believes it is high risk for purposes of tourism. Agreed with previous assertions that the use was a detriment to the island and noise pollution.

Commissioner Bloemendaal asked Mr. Devlin who determined a congested area. Mr. Devlin responded it would be the city or town. There is no minimum altitude over the ocean. In a non-congested area the minimum altitude is 500 feet.

Commissioner Kennedy asked if Mr. Devlin considered himself an expert in the noise levels produced by aircraft. He responded he did not. Commissioner Kennedy believed that allowing the use by CUP in the Industrial Zone could potentially open up the possibility of a landing strip. Mr. Devlin explained that he thought the loudest noise levels would come from over flights by helicopters.

Mr. Devlin reiterated that the allowance is an unnecessary risk to property and life. The most vulnerable point of flight is during take off and landing. Chairman Reynolds agreed but reiterated that the risk was there regardless as helicopters are already allowed to fly over the Town.

Commissioner Davis asked Mr. Devlin if anything could be done to enforce the height military helicopters flew over the Town. Mr. Devlin responded that likely complaints could be made.

Chairman Reynolds asked in terms of enforcement who could actually say if an aircraft is flying at less than 500'. Mr. Devlin responded that it is hard to say unless there is a reference point. Chairman Reynolds asked if there was anything recorded in flight with the altitude. Mr. Devlin answered there is an altimeter onboard that is transmitted.

Commissioner Grady asked if the amendment was denied and was the use was specifically prohibited, if helicopters would then fall under the outdoor entertainment land use. Chairman Reynolds differed this question to after the Public Hearing was closed.

Carla Schoonmaker. Reiterated that the noise created during September 2015 was more than anyone should have to deal with.

Brett Keeler. Stated that the citizens present at the meeting tonight did not live near the proposed area. Told the Commission that the helicopter operator had reached out to him and offered to alter flight path away from his neighborhood. Mr. Keeler explained that he told the operator it would not solve the problem and would only affect others.

Kathy Long. Next project to be located at 910 Old Dow.

Richard Russell, 501 Fern Creek. Asked why an amusement use couldn't be amended to be considered fixed to the ground. Also asked for an amendment to define where commercial aircraft could and couldn't operate.

Chairman Reynolds explained to Mr. Russell that there is a three month process for text amendments. Chairman Reynolds believed that this amendment would address both issues that Mr. Russell had raised.

Mr. Devlin. Asked why a landing zone would be allowed in a zoning district next to an established residential area.

Commissioner Bloemendaal made a motion to close the Public Hearing. Commissioner Cottrell seconded the motion.

Commissioner Kennedy addressed that regardless of whether or not the amendment was passed, there still was an opportunity for the submittal of a CUP for a helicopter tour business in the HB. Ms. Kenned added that if P&Z were to deny the proposed text amendment, something would have to be put in place to specifically prohibit the use.

Mr. Parvin cautioned the Board from recommending to specifically prohibit a use. Staff has seen loopholes opened up when specific uses have been prohibited. Mr. Parvin believes it can be done but a loophole could be created.

Commissioner Bloemendaal proposed that P&Z recommend to approve the definition of aircraft, remove the development standards, and remove the 'C' from the table of permissible uses. Commissioner Bloemendaal explained the use would be addressed but not allowed in any zoning district. Commissioner Toppin agreed that they were not creating a loophole by specifically prohibiting the use.

Mr. Parvin informed the commissioners that they could put additional conditions on the amendment. The Commission could recommend that Staff address specific items and bring the amendment back to the Board for review.

Commissioner Davis stated to the commissioners that the conditions of a CUP can be difficult to meet. Commissioner Bloemendaal felt there could still be the chance.

Chairman Reynolds summarized that the Board could approve and take the chance of a CUP for the use someday or recommend to specifically prohibit the use. Mr. Parvin cautioned that prohibiting the use might not accomplish the intent of the Commission.

Commissioner Toppin stated that explicitly prohibiting a use might allow more unfavorable uses to come in.

Mr. Parvin clarified that by prohibiting a specific use you're in affect saying everything else is allowed. He recommended the Commission consider recommending additional conditions to the amendment.

Commissioner Bloemendaal said that he disagreed with Mr. Keeler's statement that it would not bring economic benefits to the Town. He believes it could bring an economic benefit. He also believes it would bring an impact to the State Park as well. Commissioner Bloemendaal also stated that the risk of a helicopter crash already exists today, can only be minimized.

Commissioner Toppin requested that in Section 18-7 a, the proposed text be amended to allow a minimum altitude of 1,000 feet and that the entirety of the Town be considered congested.

Chairman Reynolds asked if there were prohibited uses in the table of uses. Mr. Parvin responded that there have been but currently there are none.

The Commissioners discussed recommending portions of the proposed text be excluded, specifically some of the development standards, the parking requirements, and specifically prohibiting the use in the table of permissible uses. The Commissioners voiced their concerns for the quality of life for the citizens of the Town as well as their safety.

Commissioner Toppin asked the board if there was a less desirable use that they could possibly be allowing. Commissioner Bloemendaal responded that he hoped the courts would clarify the Bird case.

Commissioner Bloemendaal made a motion recommend the approval of the text amendment to Chapter 40 Sec 40-72, 40-150, 40-261, Sec. 40-548 and Chapter 18 Sec. 18-7 with the following revisions: make aircraft landing zones not permitted in any zoning district in the table of permissible uses under Chapter 40 Sec 40-72; remove the parking standards in Sec 40-150; remove the development standards for particular uses in Sec. 40-261; and amend Sec. 18-7 to state that all area within the Town limits is considered a congested area and will require an aircraft minimum altitude of 1,000 feet. Whereas in accordance with the provisions of the NCGS 160A-383, 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. The motion was seconded by Commissioner Cottrell. All were in favor (7-0).

6. NON-AGENDA ITEMS

Mr. Parvin told the Commission he would email out a UNC School of Government summary of the Byrd Vs. Franklin case.

Commissioner Cottrell asked if body piercing would require a text amendment. Chairman Reynolds answered that it would.

7. ADJOURNMENT

Commissioner Bloemendaal made a motion to adjourn. Commissioner Cottrell seconded. All in favor (7-0).

Kimberlee Ward, Town Clerk

Date Approved