

CAROLINA BEACH

Regular Town Council Minutes
Tuesday, October 8, 2019 @ 6:30 PM
Council Chambers
1121 N. Lake Park Boulevard
Carolina Beach, NC 28428

ASSEMBLY

The Town of Carolina Beach Regular Town Council was held on Tuesday, October 8, 2019 at 6:30 PM at Council Chambers.

PRESENT: Mayor Joe Benson, Mayor Pro Tem Tom Bridges, Council Member LeAnn Pierce, Council Member Steve Shuttleworth, and Council Member JoDan Garza

ABSENT:

ALSO PRESENT: Interim Town Manager Ed Parvin, Town Clerk Kim Ward, and Town Attorney Noel Fox

1. MAYOR BENSON CALLED THE MEETING TO ORDER FOLLOWED BY THE INVOCATION BY SHIRLEY JAMES OF FIRST BAPTIST CHURCH CAROLINA BEACH AND THE PLEDGE OF ALLEGIANCE

2. ADOPT THE AGENDA

- a. Mayor Benson announced that the applicant for Item 6(b) a Conditional Use Permit request for a 2 unit detached residential Planned Unit Development located at 504 Keys Lane has pulled the item from tonight's agenda.

Council is adding a personnel item to the closed session.

Council Member Garza said that he wanted to address an item on the agenda that he has a huge problem with. He stated that last month applications came in for the Business and Economic Development Committee all the way up to the day of voting and Council allowed that to go through. Today, there were two additional applications received for the Marketing Advisory Committee that are not listed on the ballot. He recommended removing the appointments to the Marketing Committee from tonight's meeting, add the two new applications, and go from there.

Mayor Benson asked if that was a motion.

Council Member Garza replied that it was.

Mayor Benson called for a vote and it passed unanimously.

Council Member Pierce said that she agreed with Council Member Garza and asked if there was a deadline for submitting applications.

Town Clerk Kim Ward replied that once the agenda packet is final and sent out, she does not add to the ballot in order to allow Council enough time to review the applications before they vote. She stated that there was not an applicant added to last month's ballot and was not clear on what Council Member Garza was referring to.

Council Member Garza asked to discuss this during non-agenda and he would like staff to accept applications all the way up until the hour the meeting starts.

ACTION: Motion to adopt the agenda with the changes mentioned.

Motion: Joe Benson

Vote: UNANIMOUS

3. CONSENT AGENDA

- a. Mayor Benson made a motion to approve the consent agenda. Motion carried unanimously.

The following items were included on the Consent Agenda:

- Set a Public Hearing for November 12, 2019 to consider a Conditional Use Permit located at 1012 Lake park Blvd S for a 2 unit detached Business Planned Unit Development Applicant: Ralph Roof
- Set a Public Hearing for November 12, 2019 to Consider a Conditional Use Permit located at 406 Harper Avenue for a 2 unit detached Planned Unit Development. Applicant Stephannie Covington
- Set a Public Hearing for November 12, 2019 to Consider a Conditional Use Permit located at 401 Marina St for an expansion of the existing marina to include a new dock for new fuel tank and a barge for an eating and drinking establishment with retail. Applicant: CBYC LLC
- Budget amendments and transfers as presented by the Finance Director
- Meeting minutes from September 10 and 24, 2019

4. SPECIAL PRESENTATIONS

- a. Special Events

Parks and Rec Assistant Director Tim Murphy presented the events for October and November.

Chief Griffin briefed an event that will be held at the Sea Witch. It is a fund raiser for the Bamahas.

- b. Manager's Update

Mr. Parvin gave an update on the following topics:

Hurricane Dorian

ADA Transition Plan

Hamlet Ocean Rescue Building

FEMA Emergency Power Facility Inspection

NCDOT Response to Pedestrian Safety

NCDOT Update

Canal Drive Stormwater Check Valves

MOTSU

October Workshop Agenda
October 10th P&Z Meeting Agenda
Technical Review Committee Agenda Items
Watershed Plan Update
Land Use Plan

Council Member Pierce asked if DOT would compromise the speed limit on Ocean Blvd. She asked to have one speed of 35 mph.

MPT Bridges said the vision clearance from the multi-use pat needs clearing.

Council Member Pierce and Council Member Shuttleworth would like a joint meeting with P&Z on the Land Use Plan and would like the new Council to have time to review the document before they vote on it.

Chief Griffin spoke about Fire Prevention Week. He also gave an update on the lifeguards. This year they are experiencing warmer than normal temperatures and high rip currents. He has decided to keep a few guards on through this weekend and evaluate it next week.

Council Member Shuttleworth asked about the Ocean Rescue Captain position vacancy.

Chief Griffin said that they have made an offer to an applicant and he hopes to introduce him at the next workshop.

Chief Griffin explained the live fire training that is planned. The house is located on Cape Fear Boulevard at 6th Street. The house was purchased and will be demolished. Training is expected between now and November 15th. The live fire is scheduled for November 16th.

Council Member Pierce asked staff to notify residents as soon as possible.

5. PUBLIC COMMENT

- a. Dale Walters 916 #2 Canal Drive gave a committee update from the Canal Drive Flooding Committee. They are putting together a public workshop. He recognized Town staff members by name for all of their assistance.

Mark Miller 702 Seafarer Drive is concerned about the crosswalk on Spartanburg. Bicyclists feel they don't have to stop and push the crossing button. The electric eye does not activate fast enough for bicycles. He recommended removing the electric eye, make the stop signs bigger, or put stop signs on Spartanburg. He would like to know who would be at fault if a driver hits a pedestrian.

Paul Levy 1606 Mackerel Lane spoke about traffic safety as well. Cars are not stopping at Mackerel and Texas. Heavy vehicles and equipment are cutting through Mackerel. He asked for more police presence at Mackerel and Texas. He asked if Mackerel could be closed to through trucks. He recommended adding speed bumps. He feels that most people are using Mackerel as cut through to Kure Beach.

Council Member Shuttleworth asked if you can limit commercial trucks from traveling on Mackerel.

6. PUBLIC HEARINGS

- a. Conditional Use Permit: For a 36 unit condo building located at 402 N. Lake Park Blvd. Applicant: Pelican Point CB LLC

The following were sworn in by the Town Clerk:

Applicant Charles Poindexter, Applicant Bob Huth, Applicant's Attorney Cindy York, Assistant Town Manager Ed Parvin, and Planning Director Jeremy Hardison.

Mayor Benson: At this time, I open the evidentiary hearing. I would like the Town Attorney to give a brief review of quasi-judicial hearings.

Ms. Fox: Mayor, Council and Members of the Town that are in attendance, this is a quasi-judicial matter which means that this hearing is an evidentiary hearing, much like a court hearing. Council must follow specific procedures that are required by State law in making its decision tonight. Specifically, Council's discretion is limited and must base its decision based on competent, relevant, and substantial evidence in the record. If you are a witness, you need to focus on the facts and standards, not personal preference or opinion. If you intend to testify, please do not offer unsupported opinions or speculation. The Council cannot consider that testimony. Please limit your testimony to relevant, competent, substantial and material evidence. Before we begin, does any member of Council have any partiality to disclose or recusal to offer?

Council: No

Ms. Fox: Does any board member have an exparte' or communications to disclose?

Council: No

Ms. Fox: Hearing none, I will turn this over to Mr. Hardison.

Mr. Hardison: Before you is an application for a Conditional Use Permit for a Planned Unit Development that will consist of a 36 unit condo, located at 406 North Lake Park Boulevard. 28 of those units will be one bedroom and 8 will be two bedroom condos. The proposal is for a four story building on pilings. The site is situated between Inland Harbor and Domino's where Lake Park Boulevard and Saint Joseph Street splits. It is in split zoning. The front part of the property is Highway Business, the water side is Marina Business and is where the structure will be situated. Prior uses for this lot: In 2004, there was a residence on site that was demolished. In 2006, the Town approved a 32 2-bedroom unit condo. In 2015, under the same ownership it was approved for 36 one bedroom units. That permit has since expired since no construction has started and a Conditional Use Permit is good for two years. Currently, the lot is vacant. There have been some improvements made to the property with a bulkhead and a dock as well as some day boat docking. There are seven specific standards that the applicant must make provisions for. One is ingress and egress to the property. They are proposing a 24-foot entrance off of Saint Joseph Street that meets the ordinance. A 5-foot sidewalk will be installed adjacent to Saint Joseph Street that will tie into the sidewalk on the other side of Domino's leading to the Central Business District. They will

provide a 20-foot dedicated fire lane on the north side of the building with pavers. This is a requirement from the fire department for the ability to run hoses around the side of the building. Staff is recommending that they provide an easement to provide interconnectivity to a future stub out to the property to the south when or if it gets redeveloped. This is adjacent to the Domino's site. They are meeting the requirements for off street parking and they are providing four spaces over the 44 required spaces. This is based off the number of bedrooms per unit. Refuse and service area will be provided on site to the south of the property and the dumpster will be enclosed. The utilities are adequate to meet the demand for water and sewer. They will be adding a fire hydrant and providing on site stormwater treatment. The requirement for the scope of this project is a 10-foot landscape buffer. They are asking for an exception to this where the fire lane is required, adjacent to Inland Harbor. They are putting a row a shrubbery along the property line and beefing up the landscaping where the pool area is. They are providing the 10-foot buffer on the other side with the exception of where the stub out and the dumpster is located. They are proposing a monument sign at the entrance of the development. They are meeting the required setbacks and open space requirements. The maximum height of the building is 57 feet to the top of the elevator shaft. They are meeting the setback requirements for the one-for-one as a cumulative measurement. They will have some surface parking in the front and they will have some parking underneath the building and they are proposing a pool on the water side. Along with the seven specific standards, there are four general conditions that the applicant must address. The conditions associated with specific site situations is the landscape buffer waiver as presented with the fire lane, a 5-foot sidewalk along Saint Joseph Street, and they will be installing a state stormwater system because of the scope and the amount of impervious surface for this project. This will require a major CAMA permit. They would provide an easement for future connectivity with the property to the south. Staff would like Council to consider an easement for future expansion of the marina walk. This would potentially provide an extension of the walk through these properties as these properties develop to promote pedestrian use and interconnectivity to the marina and provide accessibility to the sound which the CAMA Land Use Plan does support. We are looking for a 10-foot easement that would be located in the CAMA setback. There hasn't been anything designed or approved.

Council Member Shuttleworth: We wouldn't be coming back later on an easement and having to remove something that is integral to a property or we wouldn't have to be replacing something, is that the way I'm seeing that? It's just open space?

Mr. Hardison: Correct.

Council Member Pierce: Do we currently have that easement? Is that what you're saying?

Mr. Hardison: If the Town, in the future ever wanted to expand the marina walk, the easement would already be in place. We would have to go through CAMA permitting for that.

Mayor Benson: That stub out was a Town request that the applicant would grant?

Mr. Hardison: The applicant would probably like to address Council on that.

Mayor Benson: The applicant may now present evidence and legal arguments in support of the request.

Charles Poindexter: There are just a couple of notes regarding the presentation that was just made. There are two specific items that I would like to address. I'm not sure Jeremy actually understood your questions Mr. Shuttleworth. Currently, our bulkhead, floating dock, and gazebo are constructed and in place. There's a pier line in the Harbor right next to our dock. The only way that a future boardwalk can come through there would be to deconstruct my pier, my walk, and all that stuff.

Council Member Shuttleworth: So you don't think there would be a way to put a walkway behind that greenery?

Mr. Poindexter: It would be half in my pool and half in my yard.

Council Member Shuttleworth: So you would have 30 feet from that bulkhead to work with before you hit your pool?

Mr. Poindexter: That's our CAMA setback.

Council Member Shuttleworth: What is your CAMA setback?

Mr. Poindexter: 30 feet

Council Member Shuttleworth: So if I went a couple of feet behind the bulkhead and ask for 10 feet for a walkway, that wouldn't be in your pool, it would be in the grass area.

Mr. Poindexter: It would incumbent my property where the residents are living and that's planned for their living space. I get the opportunity as a builder to build sidewalks and MUP's that go nowhere and this is an example of that because once you exit my property to the north, that would be the end of it. It's just not going to go anywhere. We have discussed this with staff at length during this process.

Council Member Shuttleworth: I think the idea was, we were looking to extend it from the south to the north and yes, it may terminate someday at your property but ultimately the plan would be to bring it from the harbor across Blackburn's.

Mr. Poindexter: One thing we might consider is – apparently there is some language that may solve this issue for both of us. Rather than us providing a specific easement at this time, we would allow for the possibility of a future easement if it were to become a viable alternative. In other words, not encumber my property today but make an allowance for a possible future encumbrance if it merits it. Just giving up 10 feet of property to the Town of Carolina Beach doesn't sound like a very good idea to me. The second thing was this interconnectivity between us and the property to the south which is currently Domino's. We actually do not have stub outs on our plan because we do not plan for that interconnectivity. Those are actually hammer heads for getting out of your parking stalls. Our thought is very simple: there is no connectivity to the north, to the south is a commercial operation know as Domino's Pizza. If we connect to that property, all we would be doing is providing a parking lot for pizza delivery vehicles. That would be a huge safety concern not only to our residents but possibly taking us below our legal parking requirement parameter.

Council Member Shuttleworth: I don't think anyone is asking you to make the connectivity, I think what they are asking for is in the future if that property to the south is developed, to allow them that connectivity. I understand you do not want to open that up as a parking lot for Domino's delivery guys. If there's a hard curb there and there's no direct access, I don't know that that's an impediment to you but I think what we're trying to do is look at that overall intersection, the connectivity to adjacent parcels, and long term redevelopment of other properties to the south of you. Are you asking for an open driveway?

Mr. Hardison: No, just a stub out so any future development could connect to it.

Council Member Shuttleworth: So you could have a hard curb on it until such time there's another development may or may not come in there?

Mr. Hardison: Correct. Just for clarification, these two last items were just staff recommendations, they are not ordinance requirements.

Mr. Poindexter: It was always the intent that it would remain hardscape and it's just a future thing but I have to think about the people that we sell this property to and I have to think about their future enjoyment. They're going to connect into my parking lot. What's the point in connecting into my parking lot? Jeremy is exactly right, they are recommendations by staff. Item #14 says we will work with NCDOT about the Saint Joseph Street intersection, if that's what you call that thing! This conversation goes back to a former mayor that is on public record stating that we were to speak to NCDOT, which I talk to the engineers all the time about various things and I've talked to them about this but he clearly stated that this is not this developer's responsibility to solve the issues with that intersection. We'll talk to them and we'll do anything just like we have across this project to try to accommodate the Town of Carolina Beach but we don't have any ability to impact that intersection to the best of my knowledge.

Mayor Benson: No, I would think that is something the Town takes to DOT and our conversations related to the earlier presentation.

Council Member Shuttleworth: Explain to me your landscape buffer. I know that was an issue and the fire chief and you.. Can you tell me the landscape buffer requirement? Jeremy, tell me what the landscape buffer requirement is and how we're meeting that or the variables in that.

Mr. Hardison: The requirement is for a 10-foot essentially a green area that consists of six shrubs for every 50 linear feet. You would also have to have two canopy or if you so choose, four under soy trees that's in that area.

Council Member Shuttleworth: So if you have 50 feet, you are supposed to have two trees every 50 feet and what I think I heard you say is they decided to bulk this all together to allow for the Fire Marshal's requirement for the 20 feet. Is that what I'm understanding?

Mr. Hardison: Yes, and they plan to beef up other areas of the property.

Council Member Shuttleworth: So at the end of the day, if you have 150 feet, you'd be looking at

18 shrubs and six trees. Is my math correct? So what you are saying is they have moved those all into one area to provide the amount of foliage we've asked for but also accommodate the Fire Chief's requirement.

Mr. Hardison: Yes, I spoke with the property owner and I'm trying to see if there is some give and take to meet the requirement of the fire department.

Mayor Benson: So there's no requirement on the spacing of the trees and shrubs based on the entire length of the property line?

Mr. Hardison: There is some flexibility there.

Mr. Poindexter: Do you have that straight, because I can straighten it out?

Council Member Shuttleworth: No, I got it straight.

Mayor Benson: Does the applicant have any other witnesses to call? None heard. With that, I make a motion to open the public hearing. All those in favor? Motion carries unanimously. Would the public like to address Council? Nothing heard. With that, I make a motion to close public hearing. All those in favor? Motion carries unanimously.

Does the Board have any other questions for the party or witnesses before we deliberate?

Council Member Pierce: Jeremy, will you pull up that satellite view of the property showing the intersection?

MPT Bridges: I find it interesting this property has a Lake Park Boulevard address when it's located on Saint Joseph Street.

Council Member Shuttleworth: Jeremy, you mentioned several different occasions when this property received a conditional use permit. The last one I think you said was in 2015. Was that the same applicant and we just haven't gotten to the finish line?

Mr. Hardison: Yes, we've had some...

Council Member Shuttleworth: Right, we did some modifications, we've talked about side setbacks, we've talked about centering and that we've done those but Ed, in 2015 when we approved those there was a healthy discussion on what this applicant would do to participate in any Lake Park/Saint Joseph.. I thought we put a dollar amount on that. What was the work out we gave?

Ms. Fox: Just a reminder that this is a quasi-judicial hearing, so any information that you have from previous applications need to be discarded and you need to focus on the evidence that is presented tonight.

Council Member Pierce: So my question is, what has triggered this because I know we have seen this before so what has triggered it? Is it a renewal? Is it some change that has triggered it back

before us?

Mr. Hardison: The owner has obtained Lee's Lane which was a private road and they have now purchased that road and made it a part of their property. They have also increased the number of bedrooms for eight of the units and the building size has increased slightly.

Council Member Pierce: But it still meets the requirements for that zoning?

Mr. Hardison: Yes

Council Member Pierce: So it triggers a CUP because of what it is?

Mr. Hardison: Yes, a multi-family.

Council Member Pierce: So it meets the zoning requirement for that lot?

Mr. Hardison: Yes

Council Member Shuttleworth: So Jeremy, where are you at with the long term plans for Lake Park and Saint Joseph and has there been a discussion with this applicant on this CUP and participation on those? That is the most difficult intersection we have on Lake Park. It's got the funky three sections of concrete.

Mr. Parvin: We have hired a traffic engineer to look at this intersection and come back with some options. We have looked at several options. Implementation with this project is not something that was feasible for them to do with the timeline we had so that's not part of this proposal.

Council Member Shuttleworth: From a practicality of traffic engineering, if you look at the driveway that they've proposed coming out to that weird three-way left over right over yield. I have no problem with the plan that we've talked about. I think they understand the buffer and I appreciate the fact that they are doing stormwater on-site but traffic is always the issue and that particular one is going to dump right out at that intersection. I don't know how you pull into the building into their parking lot or leave their parking lot without interfacing. What did you guys talk about at TRC regarding this CUP with that intersection?

Mr. Hardison: It was definitely a concern and we talked with the applicant about it. They said they would talk to DOT about it, DOT said yes, they will be glad to help but the applicant wasn't able to contribute anything financially to any improvements made.

Mayor Benson: Did any of the DOT requests that we had that they approved that came back related to the intersection here?

Mr. Hardison: The last set of questions that we sent to DOT?

Mayor Benson: Yes, that came back.

Mr. Hardison: That was not in any of the discussions.

Council Member Shuttleworth: Saint Joseph Street is a Town street and this property has a Lake Park Boulevard address which is a DOT road. Did they have to get a DOT driveway access permit? I'm in a pickle. This project and this particular CUP I understand is a new application. We have to disavow all the previous history, I get that. OK, so if you want me to look at it as an isolated case which I understand, Ms. Fox, so what are we doing with Saint Joseph and Lake Park, that intersection is not acceptable to dump 60.. It's late in the game to put an undue burden on an applicant. Frankly, Jeremy, this should have been addressed with the applicant on the initial submittal. If they have to get a DOT driveway permit, then they have to meet with DOT. If it's a Saint Joseph Street address, then the Town has to do something.

Council Member Pierce: So is that 44 parking places? Is my math correct?

Mr. Hardison: 44 is required.

Council Member Pierce: So there's a possibility of 44 cars coming in and out.

Council Member Shuttleworth: Which is not going to back up Saint Joseph Street but it's just a safety issue.

Mayor Benson: As a matter of separate, and I don't want to do that but this really is something that the Town would pursue a fix to it since we're talking about a new Lake Park address.

Mr. Parvin: It's a Lake Park address but it doesn't sound like they would have to get the DOT permits.

Mayor Benson: I think that ship has sailed as far as TRC is related.

Council Member Shuttleworth: I applaud staff in working with the applicant and understanding the buffer and I think that is a great workable because going against public safety is always difficult. When I read that the Fire Chief said he had to have 20 feet, the intent of the buffer is to provide a certain amount of foliage and it sounds like the applicant is willing to do that and I applaud them for working through that and all of these other issues. As far as the easement goes, I would have no problem having our Town Attorney draft language that said it's an easement and it should be effective only at such time as a marina boardwalk is approved and funded. I understand they don't want to be burdened with some big named easement forever that may never materialize but I don't like the idea of coming back later and saying you guys said you would talk about it, so let's talk about it.

Mr. Poindexter: All I was going to say was I didn't know if it would be helpful to have some clarification on this address and driveway permit situation. If you delve into the plans, despite the 402 North Lake Park address, it is a Saint Joseph Street driveway access so that's where the permits were generated from.

Mayor Benson: That would be addressed as a separate matter. Any other questions?

Council Member Pierce: I guess I'm not clear from staff on how you guys addressed it. I don't have a problem with the project but the street access is not that great.

Council Member Garza: You have one in and out.

Ms. Fox: If I understand Council correctly, your concern is with specific standard number one, or one of the general conditions. You're concerned with ingress and egress of the property.

Council Member Pierce: Right. So those mediums that we are referring to, are they technically Lake Park Boulevard or are they technically Saint Joseph Street?

Mr. Hardison: It's a controlled access off of a DOT road so DOT would approve what that access is.

Mayor Benson: That was not a part of the original request now I'm branching off away from the topic as it relates to that so I won't do that. That's a separate indiscreet but an important one. Do I have a motion?

Council Member Garza: I agree with Steve and LeAnn in regards to trying to solve that first part of this issue which is the ingress and egress as well.

Council Member Shuttleworth: I make a motion to approve. I find that it meets the specific standards. I would also include the conditions associated with the site specific situation with the exception. (I need some help on the future connectivity), or provide an easement for future expansion of marina walk. I find that it meets the four specific standards and the four general conditions.

Mayor Benson: All those in favor.

(Vote passed 4:1 with Council Member Garza voting Nay).

Council Member Garza: I'm still trying to wrap my head around this but I'm the only nay so it doesn't matter.

Council Member Shuttleworth: We've worked very hard as a community to see this. The easement is the only one I'm having a problem with.

Attorney Fox: You just voted to approve.

Council Member Pierce: I think we should address that intersection. We have been talking about it for years. It's not the applicant's fault that it's a poor street. Did you get that easement opportunity?

Ms. Fox: Yes.

Mayor Benson: Let's take a five minute break.

- b. Conditional Use Permit: For a 2 unit deattached residential Planned Unit Development located at 504 Keys Lane. Applicant: The Pioneer Group NC Inc.

This item was removed from the agenda by the applicant and proposed to be on the November 12, 2019 agenda.

- c. Text Amendment: Allow Business Planned Unit Development(PUD) in the Neighborhood Business (NB) Zoning District. Applicant: Ralph Roof

Miles Murphy presented a request to allow Business Planned Unit Development(PUD) in the Neighborhood Business (NB) Zoning District.

Council Member Shuttleworth asked if this would affect the future Land Use Plan.

Mr. Murphy stated that this is a zoning ordinance text amendment. They are not amending the Land Use Plan.

Ms. Fox reminded Council that a plan is just that, a plan. The map that was adopted in 2007 was the plan.

Council Member Shuttleworth asked if Council adopts this proposed ordinance and they change the zones in the future, would this be in affect for those zones as well.

Mr. Murphy replied that it would not. This would only be affecting the Neighborhood Business District. The T-1 zoning district or the mixed use zoning district could come in with an application to allow a Commercial Planned Unit Development if it is not already allowed.

Council Member Garza said that it would be hard to shoot that down if we are allowing one today.

Council Member Shuttleworth expressed concern about this having a ripple affect in the future.

Mr. Murphy showed the table of permitted uses and explained that it is already allowed in the CBD, HB, MB-1, and T-1, and they would only be voting to allow it in the Neighborhood Business by conditional use permit. He explained that a PUD is not the number of businesses but the number of structures.

Council Member Shuttleworth mentioned that Council has discussed over the years to do away with CUP's because they are hard to enforce and track.

Ms. Fox state that she has not been a part of any of those conversations that she can recall.

Mr. Parvin said that he does recall having those conversations because some of these cases are more intense and some are less intense. He felt that Council Member Shuttleworth has a good point that there are some smaller PUD's that could be permitted by right.

Mr. Murphy said that staff's recommendation is to acknowledge that this zone in the 2007 Land

Use Plan recommends primarily lower intensity commercial operations, but does not have any objections to allowing Business Planned Unit Developments in the NB zone.

Mayor Benson made a motion to open the public hearing. Motion passed unanimously.

No one spoke.

Mayor Benson made a motion to close the public hearing. Motion passed unanimously.

ACTION: Motion to amend Chapter 40, Article III, Section 40-72 to allow Planned Unit Development in the Neighborhood Business District. It is consistent with the goals and objectives of the adopted Land Use Plan and other long range plans.

Motion: Joe Benson

Vote: UNANIMOUS

- d. Text Amendment: To amend Chapter 40, Article VIII and XVIII to address government/public facilities and utilities. Applicant: Town of Carolina Beach

Miles Murphy presented the request stating that this is just consolidating definitions and the table of permitted uses for public facilities and government facilities. They were listed in two separate locations in the code. They used to be conditional use permit in every residential zoning district and we are proposing that they go to permitted by right in every residential zoning district as most of those projects are coming before Council so there are multiple notification processes going out to neighbors. Staff feels that an additional conditional use permit would be superfluous.

Mayor Benson made a motion to open the public hearing. Motion passed unanimously.

No one spoke.

Mayor Benson made a motion to close the public hearing. Motion passed unanimously.

Council Member Shuttleworth asked if this covered all of the different zones.

Mr. Murphy replied that it did.

ACTION: Motion to approve the language update to the Government/Public Facilities uses and definitions. Specifically, amending Chapter 40, Article VIII, Section 40-72 and 548. And whereas in accordance with the provisions of the NCGS 160A 383, does hereby find and determine that the adoption of a Text Amendment to amend Chapter 40 Article VIII Sec. 40 72 and 548 to adjust the definition and use of Government/Public Facilities in the Town of Carolina Beach is consistent with the goals and objectives of the adopted Land Use Plan and other long range plans.

Motion: Joe Benson

Vote: UNANIMOUS

- e. Amend ARTICLE VI. - SCHEDULES Sec. 16-205. - Schedule B, stop intersections.

Jeremy Hardison presented the request stating that it came as a directive from Council for staff to look into. Staff was asked to evaluate the need for four way stop signs in the Seagrove Community on North Carolina Avenue at the intersections of Searay, Spot, and Croaker Lane. Currently, these intersections stop traffic on North Carolina. Searay, Spot, and Croaker are through streets. Residents expressed concern about bicycles coming off the multi-use path and not obeying the stop signs that are in place.

Staff's recommendation to help stop this issue is to switch the stop signs around where you would be stopping on Searay, Spot, and Croaker, and North Carolina would become the through street. The Wilmington MPO traffic engineers reviewed and agreed with the recommendation. They try to limit the number of stop signs because they are frequently violated if unwarranted and they do not regulate speed.

Mayor Benson made a motion to open the public hearing. Motion passed unanimously.

Lynn Conto 807 North Carolina Avenue, asked staff not to remove the east/west stop signs. She would rather leave them as is if they are not going to be four way. If you change directions, that would make the through street go by the pool area. She said that the Fire Chief was not in favor of four way stops.

Mayor Benson made a motion to close public hearing. Motion passed unanimously.

Council Member Shuttleworth said that he would like keep the existing traffic pattern.

Mr. Hardison said that either way, it needs to be added to the ordinance because the current stop signs are not listed.

Council Member Shuttleworth asked staff to draft the ordinance showing the existing signage.

7. ITEMS OF BUSINESS

- a. Committee Appointments

This item was removed from the agenda at the request of Council Member Garza.

8. NON-AGENDA ITEMS

- a. Council Member Shuttleworth congratulated Council Member Garza on his upcoming wedding.

MPT Bridges said that the Brunswick Plant will be siren testing tomorrow.

Ms. Fox said that the contract for the 3 Carolina Beach Avenue South property purchase has an amendment. This does not change any of the terms. It only lists an additional seller. Judy R. Schrim owned 12.5% interest and her attorney and Mr. Barnes negotiated the terms. Council will need to approve the amendment.

Council Member Shuttleworth made a motion to approve the amended contract for 3 Carolina Beach Avenue South to include Judy R. Schrim as owning 12.5% interest. Motion passed

unanimously.

9. CLOSED SESSION

- a. Closed Session to Discuss a Real Estate and an Attorney/Client Matter

ACTION: Motion to go into closed session to discuss a real estate and an attorney/client matter in accordance to NCGS 143-318.11(a)(3)and(5).

The matters being discussed include:

TCB vs. Carolina Freeman LLC NHC 18 CVS 3151

TCB vs, B&F Enterprises LLC NHC 18 CVS 3152

TCB vs DRDK, LLC NHC 18 CVS 3153

TCB vs Freeman Beach, LLC 18 CVS 3154

The properties include:

316 Cape Fear Boulevard, Carolina Beach

1101 North Lake Park Boulevard, Carolina Beach

Motion: Joe Benson

Vote: UNANIMOUS

10. ADJOURNMENT

- a. Mayor Benson made a motion to return to open session stating that no action was taken during closed session. Motion passed unanimously.

Mayor Benson made a motion to adjourn at 10:00 p.m. Motion passed unanimously.

Adopted at a regular meeting on November 12, 2019.

Recorded by: Kimberlee Ward

Planned Unit Developments



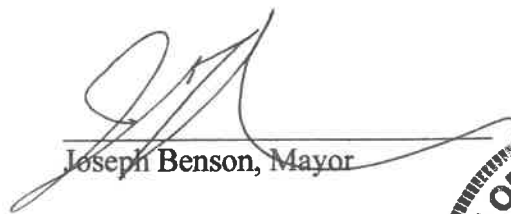
ORDINANCE 19-1123

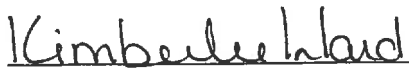
Amend Chapter 40 Zoning Article III, Sec. 40-72 Table of Permitted Uses

Article III, Sec 40-72 Table of Permitted Uses

Sec 40-72. Table of Permissible Uses														
TABLE INSET:														
P = Permitted														
C = May be permitted with Conditions														
TABLE INSET:														
USES OF LAND	R-1	R-1B	R-2	R-3	C	MH	MF	MX	CBD	NB	HB	MB-1	T-1	I-1
Manufacturing, Assembly, and Processing														
Planned unit development, business (See article XII of this chapter)										C	C	C	C	C

Adopted this 8th day of October, 2019.


Joseph Benson, Mayor

Attest: 
Kimberlee Ward, Town Clerk



Government / Public Facilities and Utilities



ORDINANCE 19-1124

Amend Chapter 40 Zoning Article III, Sec. 40-72 Table of Permitted Uses and Article XVIII Sec. 40-548. - Definitions

Article III Sec. 40-72. - Table of permissible uses.

USES OF LAND	R-1	R-1B	R-2	R-3	C	MH	MF	MX	CBD	NB	HB	MB-1	T-1	I-1
Government/ Public facilities/ and utilities (See section 40-261)	E P	E P	E P	E P	E P	E P	E P	E P	P	P	P	P	P	P

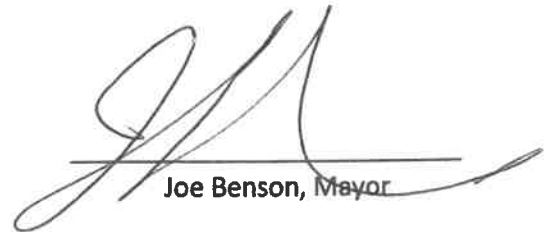
Article XVIII Sec. 40-548. – Definitions

~~Government facilities~~ means indoor or outdoor areas improved to serve a particular government function.

~~Public facilities~~ means major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities.

Government/Public facilities means indoor or outdoor areas of local, state, or federal control intended to serve public function as, but not limited to transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities.

Adopted this 8th day of October, 2019.


 Joe Benson, Mayor

Attest: Kimberlee Ward
 Kimberlee Ward, Town Clerk



Joe Benson
Mayor

Steve Shuttleworth
Council Member

LeAnn Pierce
Council Member



Tom Bridges
Mayor Pro Tem

JoDan Garza
Council Member

Ed Parvin
Interim Town Manager

Town of Carolina Beach
1121 N. Lake Park Boulevard
Carolina Beach, North Carolina 28428
TEL: (910) 458-2999
FAX: (910) 458-2997

ORDER GRANTING A CONDITIONAL USE PERMIT MODIFICATION

Location: 402 N. Lake Park Blvd.

Applicant: Pelican Point CB LLC

The Town Council of the Town of Carolina Beach, having held a quasi-judicial public hearing on **October 8, 2019** to consider the application submitted by Pelican Point CB, LLC for issuance of a Conditional Use Permit for a 36 unit multi-family condo building at 402 N. Lake Park Blvd ("Property"). At the hearing both the Town and the Applicant presented sworn testimony. The record included the following:

1. Application filed 8/25/19, dated by Pelican Point CB, LLC for a Conditional Use Permit which contained the site plan, and project narrative.
2. Staff Memorandum dated 10/1/19 summarizing the Application and Town Staff's position.
3. Power Point presentation presented on October 8, 2019.
4. The following persons offered sworn testimony: Planning Director Jeremy Hardison and Charles Poindexter for the Applicant.
5. Testimony by Jeremy Hardison and Charles Poindexter

Jeremy Hardison testified that:

1. The Property is zoned both Highway Business and Marina Business.
2. Existing improvements on the Property include a bulkhead and dock.
3. A 24 Foot entrance is proposed off Saint Joseph Street.
4. A 5 foot sidewalk will be installed adjacent to Saint Joseph Street which will tied into an existing sidewalk.
5. A dedicated 20 foot fire lane will be located on the north side of the proposed building and is a requirement for the fire department.
6. The applicant proposes forty-eight (48) parking spaces.
7. The dumpster will be enclosed.
8. A fire hydrant will installed.
9. Stormwater treatment will be on site.
10. A ten (10) foot landscape buffer is required
11. A monument sign at the entrance is proposed.
12. The maximum height of the building is 57 feet to the top of the elevator shaft.
13. Surface parking will be located in front and some parking will be underneath the building.
14. A swimming pool is proposed adjacent to the sound.
15. The CAMA Land Use Plan supports pedestrian use and interconnectivity to the marina and accessibility to the sound.
16. Staff recommends a condition of an easement for future expansion of the marina walk.
17. Staff recommends a stub out for interconnectivity with the property located to the South.

Charles Poindexter testified that:

1. Existing improvements on the Property include a bulkhead, floating dock and gazebo.
2. The proposed future boardwalk would require deconstruction of those improvements.
3. The future boardwalk would be located half in the swimming pool and half in the yard.
4. The CAMA setback is thirty (30) feet.
5. Giving up ten (10) feet of property to the Town does not sound like a very good idea to me.
6. Interconnectivity between the Property and the property to the South would create a safety concern.

After considering all the testimony and evidence presented, Council made the following findings of fact:

1. Pelican Point Development, LLC is the owner of a parcel located at 402 N. Lake Park Blvd. in Carolina Beach, NC.
2. The western portion of the property is zoned Highway Business (HB) and the eastern piece is Marina Business (MB-1).
3. The square footage property is 40.839 square feet.
4. The multi-family building will be on the MB-1 portion of the lot.
5. Multi-family uses are allowed in the MB-1 district with a CUP.
6. A portion of the parking will be located in the HB district and under the building. Parking areas located in other districts are allowed with the approval of a CUP.
7. CUP was issued on September 8, 2015 for a similar project by the applicant for 36 one bedroom units that expired on September 8, 2017, because construction had not started.
8. There are no density requirements in HB or MB
9. The proposed building height is 57' in height to the top of the elevator shaft. The ordinance and the 2007 Land use plan was amended to state that the building height may be permitted up to sixty (60) feet maximum with one additional foot on the required front setback and one additional foot added cumulatively to the required side setbacks for each additional foot.
10. The property is located in an AE 11 Floodzone.
11. A former private road (Lee's Ln) was purchased by Pelican Point Development, LLC and combined with 402 N. Lake Park Blvd.
12. The property is within a CAMA Area of Environmental Concern and will need a major CAMA permit.
13. The Town plans to extend an existing boardwalk adjacent to the sound.

After considering all the testimony and evidence presented, the Town Council makes the following CONCLUSIONS OF LAW:

With the inclusion of certain conditions, the Applicant met each of the following seven (7) specific and four (4) general standards:

Specific:

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

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

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

(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;

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

General Standards:

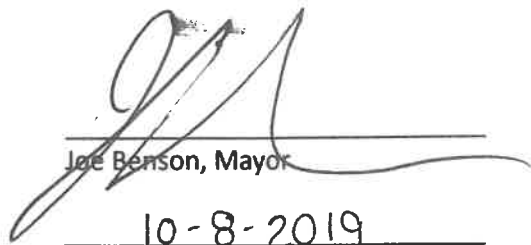
- (1) That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved by the issuance of the C.U.P.;
- (2) That the use meets all required conditions and specifications;
- (3) That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and
- (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

Therefore, it is ordered that the application for the issuance of a Conditional Use Permit by Pelican Point CB LLC be granted, subject to the following conditions:

- 1) The site plan corresponding to this approval was designed by CSD Engineering dated 8/27/19.
- 2) Prior to issuance of building permit, all local state and federal approval letters and final site plan shall be submitted, and approved by the Town of Carolina Beach.
- 3) Major changes to approved plans and conditions of development may be authorized only by the town council after review and recommendation by the planning and zoning commission.
- 4) Landscaping waiver per approved site plan.
- 5) Outdoor artificial lighting fixtures shall be designed and positioned so that the point source of light from a light fixture is not directly visible from adjacent properties and/or right-of-ways.
- 6) Install a 5' Sidewalk adjacent to N. Lake Park Blvd
- 7) The storm water system must be installed according to approved plans and a letter signed and sealed by a licensed engineer must be provided verifying that the system is properly installed and functioning.
- 8) Obtain CAMA permit prior to the issuance of a building permit.
- 9) Provide for a 20' fire lane on the north side of the building.
- 10) Provide an easement for future interconnectivity with the property to the south.
- 11) Provide a 10' access easement on the rear of the property for future expansion of the marina walk within the 30' CAMA setback area.
- 12) A plan that includes a grading schedule, and construction schedule shall be submitted to the Technical Review Committee.
- 13) Infrastructure and site plan as-builts shall be provided/approved prior to CO.
- 14) Work with the NCDOT and the Town to reconfigure the intersection of St. Joseph Street and North Lake Park Blvd.

15) The Conditional Use Permit is subject to expire on 10/8/21 if construction of the project has not started.

Ordered this 8th day of October, 2019



Joe Benson, Mayor
10-8-2019
Date

ATTEST: Kimberlee Ward
Kimberlee Ward, Town Clerk
10-8-2019
Date