

# CAROLINA BEACH

Continued Town Council Regular Meeting

Thursday, May 30, 2024 - 9:00 AM

Council Chambers, 1121 N. Lake Park Boulevard, Carolina Beach, NC



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## MINUTES

### CALL TO ORDER

Mayor Barbee called the meeting back to order at 9:00 AM.

### PRESENT

Mayor Lynn Barbee

Mayor Pro Tem Deb LeCompte

Council Member Jay Healy

Council Member Joe Benson

Council Member Mike Hoffer

Mayor Barbee said there were some changes to the agenda for today's meeting, which was originally scheduled to be a workshop. He said items 3 and 4 were workshop items, and item 2 was an addition.

**ACTION:** Motion to adopt the amended agenda

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

Mayor Barbee said there is no public comment on the agenda, so comments about anything other than the public hearing will not be heard today.

### CONFLICT OF INTEREST

*Members of Town Council shall not vote on recommendations, permits, approvals, or other issues where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member or a member has a close familial, business, or other associational relationship. No member shall be excused from voting except upon those matters as noted, above, or upon those others involving the consideration of his own financial interest or official conduct. (160D-109)*

### PUBLIC HEARINGS

1. Consider a Special Use Permit Modification for Additional Boat Slips Located at 401 Marina Street PID 313115.74.1321.000, 313115.64.9002, and 313115.64.8036 in the Marina Business and R-1B District  
Applicant: CBYC, LLC

Mayor Barbee said this is a quasi-judicial hearing with procedures that are a little more formal than how Council normally operates.

Individuals planning to speak on the matter were sworn in.

Ms. Fox said two attorneys are present tonight – Grady Richardson, representing the applicant, and Wes Hodges, representing Oceana Owners Association – and she has conferred with them about an issue related to standing. She said any arguments related to standing will be reserved for closing arguments and appellate court.

Ms. Fox said this is a quasi-judicial matter, an evidentiary hearing that is much like a court proceeding. She said there are specific procedures required by law in making the decision, which must be based on competent, relevant, and material evidence in the record. She asked if Council Members had any conflict partiality to disclose, recusal to offer, or ex parte communications to report. All Council members said no, and no one objected to any Council Member’s participation.

**ACTION:** Motion to open the evidentiary hearing

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

Applicant Carolina Beach Yacht Club and Marina (CBYC) is requesting a Special Use Permit (SUP) modification. In 2019, the applicant applied to add an eating and drinking establishment and a ship store located on a barge to the marina located at 401 Marina Street. In January 2020, an SUP was denied because it was not passed by Council (2-2 vote). Subsequently, the applicant filed a petition seeking an appeal. The Oceana Owners Association then filed a verified motion to intervene. The hearing of the appeal was canceled based on the parties entering into an agreement. The agreement was executed in December 2020 to issue the SUP with conditions.

The modification under consideration includes expanding the number of boat storage spaces. The marina is approved for 69 boat storage spaces (slips). During a zoning final inspection of the barge, it was discovered that several boat storage spaces were added, including multiple boats being parked in one designated space. Upon another inspection, the added boat storage spaces were removed, but the applicant would like to pursue expanding the marina’s boat storage spaces from 69 to 89. By adding boat storage spaces, it also increases the number of required parking spaces. The parking requirement for commercial marinas per Article V is one parking space per wet boat storage space, one per two dry storage, one per service bay, and one per two employees required for all other on-site uses. Parking is being provided for the wet boat storage space, employees, and all other on-site uses.

The modification consists of splitting 22 boat storage spaces from 45-foot storage spaces into two 22.5-foot boat storage spaces. The following are the proposed modifications to the plan:

- Removed ground floor office space from the building to convert as part of the existing residential unit on second floor.
- Reduced one storage space for the floating barge. It was depicted as two designated boat storage spaces. Staff approved the modification.
- One of the original 69 boat storage spaces that was counted did not transfer to the current owner, as it was previously sold to a property owner of a lot in the Oceana neighborhood.
- The footprint of the approved barge, 40 feet x 120 feet, is larger than what was built on-site, 24 feet by 96 feet, thus decreasing the amount of parking needed for the eating and drinking establishment and retail area.
- Relocating the dumpster closer to Georgia Avenue to accommodate additional parking.
- Expanding the parking area with spaces being added closer to the property lines that do not meet the landscaping requirements; applicant is requesting a waiver.
- Proposed food truck that will be located in the 30-foot Coastal Area Management Act (CAMA) setback buffer. It cannot be permanent and would need to be mobile.

Eleven parking spaces are proposed to be added to accommodate the modifications:

- Four additional spaces are proposed to be located in the parking lot adjacent to the marina building.
- Seven spaces are proposed in the Oceana parking lot.

The marina building parking area is located in the MB-1 zoning district. The Oceana parking lot is located in the R-1B zoning district. The Oceana parking lot is in a residentially zoned area and considered non-conforming, meaning it would not be allowed under the current ordinance to have a parking lot serving a commercial business located in a residential area. Section 40-425 Extension or Enlargement of Non-Conforming Situations, Including Land Uses and Buildings, states that an increase in volume, intensity, or frequency of a non-conforming use may be allowed. The volume, intensity, or frequency of the use of a property where a non-conforming situation exists may be increased and the equipment or processes used at a location where a non-conforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and in no violations of other subsections.

Note: When staff did a final inspection in the Oceana parking lot, a transformer was encroaching on two parking spaces. There was also a neighbor's block fence that was encroaching on a parking space in the parking lot of the marina building. Neither encroachment was depicted on the approved site plan. The applicant opted to relocate these spaces in the Oceana parking lot under a minor modification approved by staff. There has been an appeal to staff's determination that these spaces located in the Oceana subdivision are not allowed under Section 40-425 Extension or Enlargement of a Non-Conforming situation. The Board of Adjustment upheld staff's determination.

Planning Director Jeremy Hardison presented the details. He reviewed the site plan approval process and adjacent uses as well as the seven specific standards and four general conditions to be considered. He said since 2020, the Town installed a fence along the property line to protect the Town well site.

Proposed conditions from staff:

1. Type B 10-foot landscaping requirements to be waived for the additional proposed new parking spaces.
2. Food truck will need to meet Section 14-21.
3. Major changes to approved plans and conditions of development may be authorized only by Council after review and recommendation by the Planning and Zoning Commission in the same manner as outlined in this article for original submission.
4. Dedicate the existing Georgia Avenue pavement area and south of the pavement to the Town.
5. Must meet all Local, State, and Federal requirements.
6. New Hanover County Consent Order conditions shall apply. Mr. Hardison said these are mostly operational conditions vs. site conditions.

Mr. Hardison said the Planning and Zoning Commission unanimously denied the proposal based on it not meeting the following findings:

1. That the use will materially endanger the public health or safety if located where proposed and developed according to the plan as submitted.
2. That the use does not meet all required conditions and specifications.
3. That the use will substantially injure the value of adjoining or abutting property, or that the use is a public necessity.
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 located and in general conformity with the Town Land Use Plan and policies.

Council Member Benson asked about State review and approval. Mr. Hardison said the applicant has applied for a CAMA permit for additional boat storage spaces, and that application is pending the outcome of this hearing. He said if the Town is agreeable, CAMA staff said it would be consistent with their regulations.

Mayor Barbee asked the applicant to present evidence and legal arguments in support of the request.

Mr. Richardson, representing the applicant, asked to move the staff report into the record. Mayor Barbee agreed to accept it into the record.

Mr. Richardson asked Mr. Hardison if staff supports the SUP modification application. Mr. Hardison said yes. Mr. Richardson asked if traffic impact analysis or stormwater engineering are required for today's application consideration. Mr. Hardison said no.

Mr. Richardson called Chad Cooke, the authorized representative of CBYC, to the stand. During his testimony, Mr. Cooke said the marina has been allowing dockage of two boats of 22.5 feet or less per slip since February 2023, and no one on staff has been contacted about any injuries, mishaps, or damage to boats. He said Freedom Boat Club (FBC) docks the boats.

Mr. Richardson asked Mr. Cooke if they are requesting that the Town release the area north of the pavement of the easement to CBYC to own in fee simple, and Mr. Cooke said yes, adding that this space would help with on-site parking for the marina.

Mr. Hodges, representing Oceana Owners Association, asked Mr. Cooke if CBYC was ordered by the Town to stop double stacking boat slips until a modification was made to the permit. Mr. Cooke said he doesn't recall the conversation. Mr. Hodges asked Mr. Cooke if they'd received a CAMA letter asking for them to cease and desist double stacking until the appropriate approvals were received, and Mr. Cooke said yes. Mr. Hodges asked if they had continued to double stack boats while still under a notice of violation. Mr. Cooke said yes, they applied for this modification in 2023 and have been waiting for it to be heard. Mr. Hodges asked if CBYC rents party or pontoon boats to the public. Mr. Cooke said there are two pontoon rentals at the end of A dock, which are not part of the 69 slips.

Mr. Richardson asked if CBYC has had any meetings at the marina with representatives from the division that enforces CAMA. Mr. Cooke said yes, and double stacking was going on at the time. He said he was never told they were in violation or were going to get fined. Mr. Richardson asked Mr. Cooke if it was his understanding that the division was holding the notice of violation in abeyance until this hearing, and Mr. Cooke said yes. Mr. Richardson asked if anyone has come forward and alleged that the uses of the marina are in violation of any declaration of condominium, and Mr. Cooke said no. Mr. Richardson asked if anyone from the division or the Town has expressed that the pontoon boats are in violation of any ordinance, law, or permit, and Mr. Cooke said no.

Mr. Richardson called Zach Hollenbaugh of FBC to the stand. During his testimony, Mr. Hollenbaugh said FBC opened in October 2019 and that he is in support of the application for the modification of the SUP. He said double stacking would benefit FBC by allowing them to condense their fleet to a smaller footprint, making the operation more efficient. Mr. Hollenbaugh said FBC staff and members are all required to go through training with Coast Guard-licensed captains before they operate vessels, and there have been no injuries or damage as a result of double stacking the boats. Mr. Richardson showed some photos to Mr. Hollenbaugh and asked him if they depicted how the parking lot behind the Oceana gate is usually occupied on any given weekend, and Mr. Hollenbaugh said yes, adding that the lot is consistently underutilized.

Mr. Hollenbaugh said he was involved in an application to the Town of Surf City seeking double stacking of boat slips without any modifications to finger docks. He said the Town of Surf City granted that SUP in December 2023. Mr. Hodges noted an objection for the record, stating that this is an unrelated application under a different municipality with different ordinances. Mr. Richardson asked Mr. Hollenbaugh if there was any opposition to FBC's application for the SUP from the Town of Surf City. Mr. Hollenbaugh said there were concerns about safety, which were addressed, and the logistics of being able to fit two boats into one slip. He said they were able to demonstrate how their operation could make that work.

Mr. Hodges asked Mr. Hollenbaugh to explain how FBC works. Mr. Hollenbaugh said FBC has been around for more than 30 years, and he is the local franchisee that purchased the territory from Carolina Beach to Jacksonville. He said FBC operates similarly to a country club membership, with members paying an entry fee and monthly dues in exchange for access to a fleet of vessels maintained by FBC. Mr. Hodges asked about the reservation process. Mr. Hollenbaugh said there are different membership types, and the 500 members usually book boats in advance for either a half day or full day during a period that starts 30 minutes after sunrise and ends 30 minutes before sunset. Mr. Hodges asked if there may be a situation in which a member who uses a boat during the morning is still on the property hanging out at the bar barge while another member using the boat for the afternoon arrives. Mr. Hollenbaugh said with the amount of time in between reservations, they do not have any overlap at this time. He said there are stickers that go on vehicles to help monitor how long they stay on the property.

Mr. Hodges asked Mr. Hollenbaugh if FBC has sent out texts to members telling them about parking issues at the marina. Mr. Hollenbaugh said they have asked members to be mindful of this, including the fact that they are not allowed to park in the Oceana lot. He said they have told members on-street parking is available. Mr. Hodges asked Mr. Hollenbaugh if he knows there is not sufficient parking within the gravel lot that belongs to CBYC. Mr. Hollenbaugh said yes, and this is a result of Mr. Hodges' client's restrictions on what they are able to do. Mr. Hodges said it is due to the agreement that was signed by the parties. Mr. Richardson noted an objection for the record, stating that this is the subject of litigation. Mr. Hodges asked Mr. Hollenbaugh if FBC members have been directed to park in the spaces for the public park at the intersection of Georgia and Florida avenues, and he said yes. He also said members have been encouraged to carpool.

Mr. Hodges asked Mr. Hollenbaugh if he knew there was a notice of violation from CAMA with respect to the double stacking of slips. Mr. Hollenbaugh said he knows now. Mr. Hodges asked if he just learned this today, and Mr. Hollenbaugh said he previously knew there were conversations about needing to get approvals. Mr. Hodges asked Mr. Hollenbaugh if he notified FBC's insurance company that there was a notice of violation about double stacking, and he said no.

Mr. Richardson asked Mr. Hollenbaugh if FBC received a notice of violation from any agency, and Mr. Hollenbaugh said no. Mr. Richardson asked if FBC memberships here are just for this marina. Mr. Hollenbaugh said members can use the Surf City location as well. Mr. Richardson asked how many of the local FBC members live in Carolina Beach. Mr. Hollenbaugh said about 320. Mr. Richardson asked Mr. Hollenbaugh if it's his understanding that parking for a public park is open to the public on a first-come/first-serve basis, and Mr. Hollenbaugh said yes. Mr. Richardson asked if there was any rule broken by FBC asking members to park there or along the right-of-way of Georgia Avenue, and Mr. Hollenbaugh said no. Mr. Richardson asked who does enforcement for those who park illegally on a Town street. Mr. Hollenbaugh said they receive a ticket from the company that writes tickets for the Town.

Mr. Richardson called Renee Reitzel of Nest Realty to the stand. During her testimony, she said she has shown several homes in Oceana but never had anything under contract there. She said she has never heard any complaints from clients about the proximity of the marina to the homes in Oceana or had anyone cite the marina as a reason why they would not buy a house in the neighborhood. Ms. Reitzel said everyone knows the marina is there because they pass it to enter the community. She referenced a report that shows there has been no drop in prices for homes in Oceana since the double stacking of boats began in February 2023. Ms. Reitzel said the marina has been openly double stacking boats, but that has not affected home prices. She said there is currently only one active listing and there have only been five sales during the period because people hang on to their homes in Oceana once they buy them and there is not much turnover.

Mr. Hodges asked Ms. Reitzel if despite an overall trend of home prices increasing, whether there could be factors that may affect how much they increase. Ms. Reitzel said nobody knows. Mr. Hodges asked Ms. Reitzel if given that fact that she's closed no transactions in Oceana, whether she can say for sure what any of those factors are for any properties bought and sold in Oceana in recent years. Ms. Reitzel said the fact that she has not closed on any of these properties doesn't mean she can't say that, adding that she lives right down the street.

Mr. Richardson asked Ms. Reitzel, who has shown several properties in Oceana and surrounding communities, whether anyone has ever communicated to her that the presence of the marina or the double stacking of boats there is a deterrent for them buying a property nearby. Ms. Reitzel said no.

Mr. Richardson said this concluded the evidence in support of the application and contended he reserves the right of rebuttal of evidence and testimony.

Mr. Hodges called Mr. Hardison back to the stand to ask questions about the staff report. During his testimony, Mr. Hardison said he was on the marina property doing a final inspection pursuant to the original Conditional Use Permit (CUP) that was issued pursuant to the settlement agreement when he first noticed the double stacking. He said he notified CBYC to stop this process and that he would not be able to sign off on anything until conditions were consistent with the CUP approval. Mr. Hardison said he was aware of the notice of violation from CAMA, and he agreed one of the reasons for asking CBYC to stop double stacking prior to getting approval would be because required parking was not in place.

Mr. Hodges mentioned the floating barge structure, also referred to as a houseboat, which according to the settlement agreement must be used for residential purposes or as a marina office. He asked Mr. Hardison if he previously heard Mr. Cooke equate FBC's use of that structure as its office with the marina's use of that office, and Mr. Hardison said yes. Mr. Hardison said one parking space is required for that structure, previously reduced from two based on the fact that it is being counted as one boat storage space.



Mr. Hodges asked Mr. Hardison what the parking requirement is for a professional office. Mr. Hardison said it is one parking space per 300 square feet. Mr. Hodges asked Mr. Hardison if the parking requirement would be five parking spaces if that structure was 1,500 square feet and sitting on land, and Mr. Hardison said yes. Mr. Hodges asked Mr. Hardison if he was aware a boat is being parked behind the houseboat structure. Mr. Hardison said no and that he told Mr. Cooke it should be used as one storage space for the houseboat only. Mr. Hodges presented Google Earth aerial photographs showing a boat being parked behind the houseboat for over a year. He asked Mr. Hardison if he took it upon himself to figure out how that slip was being used. Mr. Hardison said CBYC did not propose to change the use and has not applied for an application to change the use.

Mr. Hodges mentioned the boat storage space that was taken out of the count of 69 due to it previously being sold to Ricky Young, the property owner of a lot in Oceana. He asked Mr. Hardison if he received a letter from Mr. Young's attorney. Mr. Hardison said he doesn't recall. Mr. Hodges presented a letter dated December 22, 2023, to Mr. Hardison and others regarding Mr. Young's slip and deed. Mr. Hodges asked Mr. Hardison if he eliminated a parking space for that slip despite the fact that Mr. Young bought this slip that included an interest in the common elements and a right under the declarations that were then assigned to CBYC of the right to use the parking area. Mr. Richardson noted an objection for the record, stating that this calls for a legal conclusion and adjudication that only a judge can give. Mr. Hodges said he is simply asking why a parking space for that slip was backed out of the parking calculation. Mr. Hardison said it was based on the proposal and application, and he did not investigate Mr. Young's right to use those parking areas.

Mr. Hodges asked Mr. Hardison if two parking spaces would equate to four employees. Mr. Hardison said yes, and four employees were shown in the application. Mr. Hodges asked Mr. Hardison what he did to confirm there were only four employees at CBYC. Mr. Hardison said he must rely upon the application. Mr. Hodges said every parking space matters in this situation, as there is no leeway for the calculations, and Mr. Hardison confirmed, agreeing that if one more parking space is required the applicant would not meet code. Mr. Hodges asked if the application included any parking spaces allocated for FBC employees. Mr. Hardison said the proposal was specific to the marina. Mr. Hodges asked Mr. Hardison if FBC has applied for any CUP or SUP with the Town, and Mr. Hardison said no. Mr. Hodges mentioned that water-oriented businesses require Conditional Zoning (CZ) approval, and Mr. Hardison confirmed this is correct under the table of uses. Mr. Hodges asked if that hasn't been done here with respect to FBC because staff's interpretation is that FBC is not part of an existing marina, and Mr. Hardison said that's correct.

Mr. Hodges asked Mr. Hardison if at the time parking calculations were done whether he was aware that CBYC also rents pontoon boats, and Mr. Hardison said yes. Mr. Hardison said when he did the inspection, there were 69 boat storage spaces and no other vessels outside of them. He added that if there was a vessel parked on-site, then it needs to be calculated in parking. Mr. Hodges asked if the pontoon boats, which hold up to 10 passengers each, are kept on the property somewhere outside of the 69 spaces whether those would require additional calculations for parking, and Mr. Hardison said



that is correct. Mr. Hodges asked if Mr. Hardison had done any investigation into the pontoon boat rentals. Mr. Hardison said no, other than being aware that they are part of the operations.

Mr. Hodges asked Mr. Hardison if he has the authority to request a reasonable amount of parking spaces for additional uses. Mr. Hardison said for unlisted uses, yes, adding that the pontoon boat rentals, the houseboat being used as a commercial office, and FBC employees were not part of the application and therefore were not allocated any additional parking requirements. Mr. Hodges asked if any employee parking had been allocated for employees of the food truck depicted on the site plan. Mr. Hardison said no, but the food truck would have to meet Town regulations for food trucks.

Mr. Hodges said the Town Land Use Plan states a goal of reducing traffic and parking congestion and ensuring adequate access for emergency services. He also mentioned the document referencing the north end of Town being a “vulnerable isthmus” with future intensification not being encouraged in this area.

Mr. Richardson asked Mr. Hardison if it’s staff’s practice to accept an application as true and not act as a judge. Mr. Hardison said yes, he must apply the ordinance to what’s on the application. Mr. Richardson asked if something is found in violation of an approved site plan or permit if the Town has remedies to handle this. Mr. Hardison said yes, this would be an enforcement issue.

Mr. Richardson asked Mr. Hardison if the maximum capacity of a vessel is part of the calculation for parking under the Town’s regulations, and Mr. Hardison said no. Mr. Richardson asked if it’s his client’s burden to stay within the authorization of a permit and bring itself into compliance if it’s in violation, and Mr. Hardison said yes. Mr. Richardson asked if staff found that the application before Council today is consistent with the Land Use Plan and was found to be harmonious with the surrounding areas, and Mr. Hardison said yes.

Mr. Hodges called Olin Furr, President of the Ocean Owners Association, to the stand. During his testimony, Mr. Furr said parking and traffic congestion issues at the entrance to the subdivision began last year on busy weekends and culminated with cars parking up and down Georgia Avenue. He said these cars were initially being ticketed, but parking enforcement officers were told by the Town to stop ticketing. Mr. Richardson noted an objection for the record, stating that this testimony is inadmissible due to hearsay. Mayor Barbee said he feels comfortable that Council can hear from the witness and figure out his competency. Ms. Fox said Council was given instructions about what can be considered in their decision, and a reminder will be issued at the end.

Mr. Furr said parking in the neighborhood is strained, with people walking down the street after parking because there are no sidewalks and cars are circling and pulling over wherever they can. He said he has concerns about emergency vehicle access and thinks the parking spaces staff added inside the CBYC lot behind the Oceana gate should have been considered a major modification. Mr. Furr said Oceana residents don’t want additional parking in this area and thought they had it settled that it would remain a 56-space parking lot.

Mr. Furr described the process for obtaining parking passes for the lot and said he is in charge of it. He said FBC is a large driver of traffic because it is a business running two shifts with 36 employees and not just people coming to use their boats occasionally, as with a marina. Mr. Furr said the FBC people are nice and he gets along well with them, but CBYC does not have the parking to take care of this water-oriented business operating inside of it.

Mr. Hodges showed the deed of easements that was part of the settlement in late 2020, which indicated there should be parking based on 70 boat storage spaces. He noted that the number should actually be 69, and he is unsure how it became 70. Mr. Hodges said the application showed four CBYC employees, which equates to two parking passes, but Mr. Furr said there are currently seven parking passes issued to CBYC employees.

Mr. Hodges asked Mr. Furr if FBC is using the floating house. Mr. Furr said they occupy both floors, and the structure is about 1,300 or 1,400 square feet. Mr. Hodges asked how many parking passes have been issued to FBC employees who work at the marina. Mr. Furr said there are now 36. Mr. Hodges asked Mr. Furr if he thinks those employees have been factored into the parking calculations for the proposed modification, and Mr. Furr said no.

Mr. Hodges asked Mr. Furr if he had seen the pontoon boats going out and coming in. Mr. Furr said yes, they usually come out of the transient slips. He said FBC also has pontoon boats. Mr. Furr said he's only seen people in the pontoon boats once, and there were at least eight people aboard.

Mr. Hodges asked Mr. Furr how the proposed modification will affect the dumpster. Mr. Furr said the dumpster used to sit on the corner and it was a mess, but after the current CUP was agreed upon it was moved to inside of the lot up against the fence inside of a corral. He said this is the best spot for it because it's away from everyone and hidden. Mr. Furr said the proposed dumpster would go at the entrance of Oceana's main gate and point toward Marina Street, which is the subdivision's easement. He said trash trucks will come in and overburden that easement. Mr. Furr said it is a slap in the face for someone to put a dumpster at the entrance to a subdivision, which is a situation that likely can't be found anywhere else in the Town.

Mr. Furr said two people have moved out of Oceana because of the marina. He asked Council to dig into the regulations and look at how they are being applied regarding parking. Mr. Hodges pointed out the consent ordinance entered into as part of the settlement between the Town, Oceana, and CBYC and said one of the provisions agreed to is that any future permit applied for by CBYC requesting additional uses of the property not contemplated in the current permit may be contested by Oceana.

Mr. Richardson asked Mr. Furr if all 69 boat storage spaces were in existence when he bought his house over six years ago. Mr. Furr said yes, but they were operated differently. Mr. Richardson asked Mr. Furr if he had any photographic evidence showing usage of the parking lot behind the Oceana gate

being maxed out, and Mr. Furr said no. Mr. Richardson asked if the parking lot has ever been maxed out at any time since the settlement agreement, and Mr. Furr said no.

Mr. Richardson asked who has the duty to enforce whether a vehicle in the Oceana parking lot is validly authorized. Mr. Furr said Oceana is the administrator of adhering the barcodes and keeping a database, and CBYC is supposed to hire a towing company to ride through and monitor the parking lot to ensure all vehicles have a barcode on them. He said there have been dozens of instances of unauthorized vehicles being in the lot, even since the settlement agreement, but they worked through it. Mr. Furr said the agreement works well if it's followed.

Mr. Richardson asked if all traffic concerns outside the gate have come about because there is an underutilized parking lot facility behind the Oceana gate because of the restrictions on parking that Oceana's position has taken. Mr. Furr said there were never parking problems in Oceana due to the marina until CBYC showed up. He said the way they operate pushes the limit and maxes out everything.

Mr. Richardson asked if anyone had moved out of Oceana because of the marina since the settlement. Mr. Furr said no, the agreement has worked and it needs to be kept like it is. Mr. Richardson said the proposed dumpster site is not at the Oceana entrance and is located on his client's property. He asked Mr. Furr how many parking spaces he contends the application should have. Mr. Furr said 130 to 140. Mr. Richardson asked what his basis is for these figures, and Mr. Furr said there are others who will testify with that information, but when pressed by Mr. Richardson he said FBC is the driver of the need for more parking because it is a boat rental time share business running multiple shifts, creating a traffic problem on Georgia and Florida avenues. Mr. Richardson asked Mr. Furr if he knows every vehicle parked in that area belongs to patrons of the marina. Mr. Furr said they come back from boats and get in those cars to leave, so it's obvious that's who they are. He said some slips have not had barcode stickers issued because some people would rather park along the street instead of inside Oceana because that puts them closer to their boats.

Mr. Hodges called James Sanderford, Vice President of Oceana Owners Association, to the stand. Mr. Sanderford said he is a Professional Engineer licensed in Arizona and North Carolina, and he gave details about his education and experience. He said he has prepared a review of the plans being considered tonight. Mr. Richardson noted an objection for the record, stating that witnesses are required to give testimony in the form of questions and answers rather than a narrative. Mr. Hodges said Mr. Sanderford has been sworn in and was asked if he has prepared a review and what his findings are, and Mr. Richardson is free to object to anything he says. Mayor Barbee said he tries to err on the side of letting people speak, although he hears Mr. Richardson's concerns and respects his right to interject at any time. Mayor Barbee asked Mr. Sanderford to stay on track and limit his presentation to the review he performed.

During his testimony, Mr. Sanderford said he used existing parking calculations in the Town ordinances to come up with a total of 132 parking spaces that should be required, taking square footage of the

floating structure and employees for both CBYC and FBC into account. He presented photos that he contends show public safety issues and conflict among Town policies regarding off-street parking in the neighborhood. Mr. Sanderford said some of these photos were taken last summer before the bar barge was open, and others were taken recently. They showed cars parked along Georgia Avenue, including some flowing onto adjacent side streets such as Maryland Avenue, and people walking in the roadway because the shoulder is full of cars. Mr. Sanderford said he recently called 911 because of a car protruding into the road, causing what he believes was a fire code issue regarding fire vehicle access along the road. He said the area never had this issue before, and the reason so much traffic is being generated now is due to FBC operating inside CBYC. Mr. Sanderford said FBC is a water-oriented business and should require a CUP.

Mr. Sanderford brought up concerns about access to handicapped parking spaces. He said not complying with the Americans with Disabilities Act (ADA) is a very serious issue. Mr. Sanderford also handed out printed material to Council. Mr. Richardson noted a renewal of his previous objection for the record, citing the narrative aspect of Mr. Sanderford's testimony and stating that the distributed report appears to contain a large amount of hearsay. Mr. Sanderford said the report contains a complaint dealing with the modification, a complaint dealing with the first CUP, and a complaint filed with the Office of State Fire Marshal, which is currently being investigated. He said parking spaces are not ADA-compliant, required sight triangles will cause parking spaces to be lost, and the proposed location of the dumpster will encroach into a sight triangle.

Mr. Sanderford said the proposal is an expansion, so everything must be brought up to current standards, adding that there is no such thing as grandfathering in ADA parking spaces. He also mentioned landscaping issues and not enough room for the required recovery area at the edge of the travel way. Mr. Sanderford said the proposed location of the dumpster will destroy Oceana's roads, citing information about the typical thickness and construction of dumpster pads.

Mr. Sanderford said all the issues he's found with the plans are related to traffic flow, and he believes this will be a problem for emergency vehicles because time matters when there are medical issues and having parking impeded will make a difference. He said something needs to be done about the parking situation. Mayor Barbee said Mr. Sanderford was asked to present his findings and now sounds like he's going into giving his opinion. Mr. Sanderford said his presentation is over and he's currently talking as a concerned citizen. He said there have been a lot of mistakes that should have been checked before things got to this point.

Mr. Richardson asked Mr. Sanderford if the marina was in existence when he bought his property, and Mr. Sanderford said yes. Mr. Richardson asked if Mr. Sanderford had filed an ADA complaint against his client. Mr. Sanderford said he has notified the proper agencies of what he perceives as a public safety issue. Mr. Richardson asked how many complaints have been found to be valid and enforced against the marina. Mr. Sanderford said currently none, but they are still in progress. Mr. Richardson pointed out that Mr. Sanderford is not a disinterested expert or witness because he lives in Oceana and is

opposed to the marina's application. Mr. Sanderford said this is correct, but he has used ordinances and not his opinion to support his claims.

Mr. Richardson asked Mr. Sanderford how many times he has called 911 regarding the marina. Mr. Sanderford said once, and Mr. Richardson pointed out that it was just before this hearing. Mr. Sanderford said other people have called, and he thought another call was warranted when he went outside the gate and saw people and cars in the road. He added that the issues with the roadway started with FBC because it is a business operating inside of a business.

Mr. Sanderford said Georgia Avenue is 18 feet wide, which doesn't meet the fire code of 20 feet on its own but is further problematic due to cars parking on the street. Mr. Richardson asked Mr. Sanderford how he calculated the figure of 18 feet. Mr. Sanderford said he measured from asphalt to asphalt in the area of Georgia Avenue as it approaches Oceana. Mr. Richardson asked Mr. Sanderford if he believes a roadway is only considered to be pavement. Mr. Sanderford said yes, the shoulder is not included as part of the roadway per the fire code. Mr. Richardson asked Mr. Sanderford if he had made any complaints about the narrowness of the road. Mr. Sanderford said no, but he is making a complaint today. Mr. Richardson pointed out that the Fire Department is one of the Town departments that has reviewed the site plan as part of the standard Technical Review Committee (TRC) process, but Mr. Sanderford said he doesn't believe the site plan showed that cars were being parked on part of the road.

Mr. Richardson asked Mr. Sanderford about his complaint against a land surveyor. Mr. Sanderford said this was because the handicap spaces are not ADA-compliant, and the surveyor left the easement off the plan. Mr. Richardson said Mr. Sanderford filed this complaint, another against an engineer, and one with the Office of State Fire Marshal only after his client filed the application being considered tonight. Mr. Sanderford said he questions who approved the handicap spaces that currently exist. Mr. Richardson asked Mr. Sanderford how many ADA citations have currently been filed against his client. Mr. Sanderford said they're coming, but there have been none yet. Mr. Richardson pointed out that if violations were issued, his client would have the opportunity to respond and bring the issue into compliance. Mr. Sanderford said someone could file a lawsuit regarding ADA compliance at this point, but Mr. Richardson said just because someone files a lawsuit doesn't mean they will win.

Mr. Richardson asked Mr. Sanderford if he contends that the marina's parking spaces are encroaching on Oceana property. Mr. Sanderford said yes, that's what's shown on the plan. Mr. Richardson asked if a lawsuit has been filed against his client for trespassing, and Mr. Sanderford said not yet.

Mr. Richardson asked Mr. Sanderford if he believes that patrons of the marina and its employees cannot park inside of the easement area. Mr. Sanderford said easement areas must be kept clear and it's not safe to have vehicles sticking out into the road. Mr. Richardson asked if this is part of any of Mr. Sanderford's formal complaints. Mr. Sanderford said he is addressing it now before Council.

Mr. Richardson pointed out that the dumpster is on the marina's property. Mr. Sanderford said this is correct, but you can't get a dumpster truck in there and he doesn't know why it was approved.

Mr. Hodges called Ramey Kemp, a Professional Traffic Operations Engineer with RFK Engineers in Raleigh, to the stand. Mr. Kemp detailed his education, work experience, membership in professional organizations, and awards and said he is registered in North Carolina, Virginia, and Florida. He also gave a brief overview of many local projects on which he has worked. Mr. Hodges asked Mr. Kemp if he had the opportunity to review the applicant's proposed modification and what that means with respect to double stacking of the 22 slips, the presence of FBC inside the existing commercial marina, and the traffic impact that will have on the community. Mr. Kemp said yes. Mr. Hodges asked Mr. Kemp if he has formed an opinion as to whether or not that use will materially endanger public health or safety if approved. Mr. Kemp said yes, and he has based this on his research of materials used over the years to guide marina developers on how much parking is needed for a marina. He said it's a good idea for FBC to go into a marina that's already developed, but the extra demand for parking can be problematic. Mr. Kemp said the responsible way to handle parking would be to find it on-site or shuttle it in from an off-site location. He said otherwise people will be parking on the streets, and if the asphalt is 18 feet and a vehicle encroaches 2 feet then the amount of pavement is down to 16 feet or even less if people start parking on both sides of Georgia Avenue.

Mr. Hodges asked Mr. Kemp to explain the report he prepared. He mentioned concerns about pontoon boats adding to the number of people parking near the marina, especially when you factor in delivery trucks, garbage trucks, and emergency vehicles. Mr. Kemp said boats are mostly used from June to August, with the peak week being July 4. He said FBC is a great business idea but must come with some responsibility to handle the traffic that it will generate, especially during the hour between morning and afternoon shifts. Mr. Kemp referenced a study by the International Marina Institute that studied 8,000 marinas worldwide and determined that there should be two parking spaces per one boat on the water. He said when you also factor in employees and the boat slips that aren't used by FBC, it all adds up to 141 spaces needed for the facility. Mr. Kemp said most of the congestion occurs between 11:00 AM and 2:00 PM during the summer, especially on weekends and holidays. He said if cars park on both sides of Georgia Avenue it essentially becomes a one-way street, making it unsafe for Oceana residents and FBC members. Mr. Hodges asked Mr. Kemp if it's his opinion that the use as proposed by CBYC will materially endanger public health or safety if it's approved. Mr. Kemp said based on all the reasons why we have ordinances and safety rules, yes.

Mr. Richardson asked Mr. Kemp how many marinas he has designed. Mr. Kemp said he designed one in Beaufort five or six years ago. Mr. Richardson said during his career, Mr. Kemp's name has popped up many times but never as a marina designer.

Mr. Richardson mentioned Mr. Kemp's assumption that FBC boat usage shifts are 8:00 AM to noon and 1:00 PM to 5:00 PM. He asked Mr. Kemp if he heard Mr. Hollenbaugh's earlier testimony that shifts are actually from 30 minutes after sunrise until noon and 2:00 PM until 30 minutes before sunset. Mr.



Kemp said he did not hear that, and having two hours between shifts would change a little bit of what he said.

Mr. Richardson asked Mr. Kemp if his testimony was based on the assumption that all 44 boats would be going out for both morning and afternoon shifts with two parking spaces per boat needed for each shift, and Mr. Kemp said yes. Mr. Richardson asked Mr. Kemp if he has any firsthand knowledge that FBC has all 44 boats going out in the morning and afternoon. Mr. Kemp said it's a business, and it's their goal to make that happen by determining how many members they can have. When pressed by Mr. Richardson, Mr. Kemp said he does not know about the internal workings of FBC. Mr. Richardson asked Mr. Kemp if he would be surprised to learn that FBC doesn't make extra revenue based on the number of boats that get taken out during the day, and Mr. Kemp said yes. Mr. Richardson asked Mr. Kemp if he would be surprised to learn that FBC charges a member initiation fee and a monthly fee irrespective of how many times a member uses a boat. Mr. Hodges noted an objection for the record, stating that Mr. Hollenbaugh did not testify to this information during his time on the stand. Mr. Richardson said Mr. Kemp is making assumptions, and he's trying to crystalize the assumptions that are being made when Mr. Kemp has no firsthand information about FBC. Mr. Kemp said he had to make assumptions about FBC operations based on what he read and what he thought might occur.

Mr. Richardson asked if the assumptions about all boats going out during both daily shifts are based on every day during what Mr. Kemp considers to be boating season. Mr. Kemp said he considers it to be the second week of June to the third week of August, the prime period, with a peak on July 4. Mr. Richardson asked Mr. Kemp why his parking calculations were not supported by the numbers in Town ordinances. Mr. Kemp said he did look at Town code, but a boat club is a new idea and he doesn't think there is another one operating in the Town, so he wanted to come up with real numbers that project the real need. Mr. Richardson asked Mr. Kemp if the number of parking spaces he used for marina and FBC employees were irrespective of whether those employees were actually on-site working during any given time, and Mr. Kemp said yes.

Mr. Hodges asked Mr. Kemp if it's typical to look at maximum anticipated use when trying to come up with an appropriate number of parking spaces, and Mr. Kemp said yes. Mr. Hodges pointed out that Town ordinances state that maximum, not minimum, anticipated use is what the Planning Director must use to determine parking requirements for uses that aren't specially delineated in the regulations. Mr. Kemp compared it to Walmart, which has a huge parking lot that sometimes looks empty but fills up during certain times on the weekend. He said parking is designed to accommodate a maximum number.

Mr. Hodges asked to move the reports of Mr. Kemp and Mr. Sanderford into the record. Mr. Richardson noted an objection for the record, stating that Mr. Kemp's report is not based on the Town code of ordinances' expectations and standards that govern his client's application and Mr. Sanderford's is not impartial, it references things that he's not an expert and competent to give



testimony about, it contains hearsay, and it is irrelevant in material. Mayor Barbee noted the objection.

Mr. Hodges said he has no further witnesses. Mayor Barbee asked if there are others who wish to speak.

David Sadler of 211 Georgia Avenue said there is a traffic problem in the area and speed bumps don't seem to slow down motorists, so he would like Council to think about adding another one. He said he's heard a lot about all the reviews of this project provided by government, but he said the Space Shuttle Challenger was reviewed extensively and there was one engineer who kept saying there was a problem and not to launch it, but it was done anyway. Mr. Sadler urged Council to listen to the two engineers who have spoken tonight and weigh their testimony carefully because it sounds like they have a lot of experience. He said it's disturbing that evidence shown today suggests drawings that were submitted with the application didn't include easements and therefore do not provide a complete set of information for those doing reviews for the basis of their assessments. Mr. Sadler suggested the package may need to be resubmitted with more accurate information. He also expressed concerns about environmental considerations, including sea turtles, an endangered species, living in the canal and a lack of contingency planning for possible sewer or hazardous chemical spills from the barge. He asked how long it will take to detect a spill and how much will be spilled before it's detected.

Mayor Barbee asked Mr. Sadler to refrain from asking questions and instead limit his testimony to factual information about how the project does or does not meet the standards of the Town. Mr. Sadler said he was done with his comments. Mr. Richardson said based on Mr. Sadler's testimony, he does not believe Mr. Sadler establishes standing and therefore his testimony should be disregarded.

Kerry Machovec of 309 Georgia Avenue said she has owned her property since 2015 and has seen major changes since then. She said there were no parking issues until last year when FBC expanded and believes it is a huge disservice to the community to not include FBC staff and additional marina staff in the count for parking requirements. Ms. Machovec said the operation is expanding into the residential community, and she and her neighbors should not have to deal with the influx of traffic. She said she has sent photos to the Police Chief and Parking Manager showing you could not get around the corner of Florida Avenue due to the number of cars. Ms. Machovec said there are also issues with speeding and alcohol, and children under the age of 6 live in the neighborhood. She said she has personally observed 10 to 15 FBC staff on the docks on the weekends, and that doesn't include workers in the office. Ms. Machovec said all of this creates a public safety issue. She also said she has had people from the marina come onto her property, including intoxicated, underage staff members fighting under her house and slamming each other against her garage doors at 2:30 AM. She said the situation affects the neighborhood property values and is not in harmony with a residential community. Ms. Machovec asked Council not to approve placement of the dumpster at the corner of Georgia Avenue and Marina Street because of possible odors from the food being disposed of there, and she also mentioned stormwater concerns. She said FBC is trying to operate beyond its means, and

that property cannot support the amount of traffic it generates without it trickling into the residential area.

Jeannie Mintz of 205 Georgia Avenue said common sense shows it is a problem to allow a business to come into the middle of a residential neighborhood, and the restaurant should never have been allowed. She said she has lived there for 42 years since it was a dirt road, and there is no consideration for residents who have been there paying taxes for years. Ms. Mintz said while property values may have gone up because that is the overall trend, people do not want to buy in the area because of all the problems. She said the application is not in harmony with the neighborhood, and she believes that Bobby Harrelson gave the nearby park to the Town to be used by the public, not as a parking lot for FBC. Ms. Mintz said residents should not have to call every single time there is a code or parking violation, and she asked if it's illegal for cars to park in a manner that doesn't allow emergency vehicles to pass. Mayor Barbee reminded her to refrain from asking questions and instead testify. Ms. Mintz approached Council Members to show a photo on her phone. Ms. Fox asked that the photo not be shown to any other members of Council. Mayor Barbee said any photo evidence should have been provided to all parties in advance. Ms. Mintz said the Town should take action and protect taxpayers.

Mr. Richardson asked Ms. Mintz if she ever testified in opposition to the restaurant at the prior proceeding. Ms. Mintz said she did not because she was busy with a terminally ill family member. Mr. Richardson asked if she ever sought to intervene after the fact. Ms. Mintz said she thought the Town could handle the issue on its own.

Mr. Hodges asked Ms. Mintz if she took the photo on her phone. Ms. Mintz said yes, it's from a recent Monday or Tuesday around 11:00 AM and shows both sides of Georgia Avenue covered in traffic. Mr. Hodges requested that she publish the photograph to Council Members and email a copy to Mr. Hardison for inclusion in the record. Mayor Barbee said he will allow it and asked her to email it to the Town Clerk.

No one else requested to speak.

Mayor Barbee said Council Members may ask questions before the evidentiary hearing is closed.

Mayor Barbee asked about zoning for the marina and surrounding area. Mr. Hardison said the marina is Marina Business, and Oceana, Spinnaker Pointe, and the residents along Georgia Avenue are R-1B. Mayor Barbee asked if the application is considered a change of use. Mr. Hardison said no, it's a modification to an existing marina. Mayor Barbee asked what the process is if someone doesn't conform to conditions that Council puts on the issuance of a permit. Mr. Hardison said it's up to staff to ensure those conditions are met through the code enforcement process.

Mayor Barbee said the Town put some rules in place a couple years ago regarding parking on the right-of-way requiring permitting in a certain area and asked if that does not apply here. Mr. Hardison said it does not apply here. Mayor Barbee asked if residents could petition the Town to change those parking

regulations. Mr. Hardison said yes, or they may ask to designate it as a no-parking zone. Mayor Barbee asked if there have been any requests from anyone to change parking regulations in that area, and Mr. Hardison said not to his knowledge.

Council Member Benson asked if there was any public opposition to the application at the TRC meeting. Mr. Hardison said there were no members of the public present. Council Member Benson asked if there were staff concerns. Mr. Hardison said no, other than what was presented as a recommendation from staff regarding the easement of the Georgia Avenue extension. Council Member Benson asked if the Town were to abandon that whether there would be anything lost underground. Mr. Hardison said regarding the area outside the pavement, there are no utilities there.

Council Member Healy asked what the maximum number of FBC employees is out there at any given time. Mr. Hardison said he doesn't know that number. Council Member Healy said it's important to know in terms of parking spaces. Ms. Fox said this information should be in previous testimony, and Council will have to weigh the testimony. Mr. Hodges said Ms. Machovec testified that there are 10 to 15 FBC employees out there on any given day.

Council Member Healy asked about landscaping requirements. Mr. Hardison said there is a grassy area now, but if they expand a couple of parking spaces closer to the property lines as proposed, then that area should have landscaping. Council Member Healy asked if that's the only spot. Mr. Hardison said they are also proposing to move the sign and put the dumpster where there is some landscaping closer to the property line.

Council Member Hoffer asked if the plans would have never gotten to Council if TRC didn't like them. Mr. Hardison said if there's an ordinance with which the plans are inconsistent, that would need to be changed before moving forward. Council Member Hoffer asked if it's allowable for cars to back out into the right-of-way in Marina Business. Mr. Hardison said that is private property not adjacent to a right-of-way, and the easement is just to access the well site and not for the general public to traverse. He said the Town does not have authority to prevent parking from backing up there per the code. Council Member Hoffer asked if staff feels CBYC has been maintaining landscape standards required with the previous permit. Mr. Hardison said they had a landscape waiver at that time.

Mayor Pro Tem LeCompte said one of the conditions is to convert the easement space to a right-of-way, so she questioned whether that would make backing out into the street against regulations. Mr. Hardison said that is a proposed condition that is not yet in effect. He said parking is already existing, and it's important for that easement to be open for the public and to have adequate turnaround. He said this is not an already established right-of-way, so the regulation about backing out would not apply.

Council Member Benson pointed out that the current parking requirement for the houseboat is one space, but he asked what the parking requirement would be for commercial use of that space. Mr. Hardison said it would be one parking space per 300 square feet.

There were no other questions from Council Members. Ms. Fox suggested allowing each attorney to make final statements on behalf of their clients.

Mr. Richardson said he would like to make his statements last so he only has to speak once with no rebuttal.

Mr. Hodges requested that Council confirm the unanimous recommendation of the Planning and Zoning Commission to deny the application. He said if Council finds that just one more parking space is needed beyond the proposed number of 104, then the proposed modification must fail. Mr. Hodges said although Mr. Hardison is relying upon the information provided in the application, sometimes garbage in means garbage out. He said to get to the figure of 104, they had to remove a parking space that Mr. Young has a right to use with the boat slip he purchased, and they also counted only one parking space for the floating house, even though the CAMA permit shows that as two slips that would require two parking spaces. Mr. Hodges said the number of parking spaces for the floating house should actually be six due to the requirement of one parking space per 300 square feet and an additional space for the boat parked behind it. He said once you take all of this into account, along with the 35 FBC employees who are currently registered for security passes and the seven security passes currently registered to CBYC employees, this takes you even further over the figure of 104, and this doesn't even count the pontoon rentals or the food truck. Mr. Hodges said FBC has caused the problem and there has been no allocation for bringing that additional business into the equation. He said this changes the use, and under Town code a water-oriented business must either have its own permit or employees associated with that use must be factored into parking calculations, neither of which has been done here. Mr. Hodges said changing the nature of the marina has caused major traffic snarls in the area, creating safety concerns, the application does not meet all required conditions and specifications, and it is not supported by the Town's Land Use Plan because it encourages future intensification. He said there have been several comments about how the applicant can be cited for a violation and fix issues if everything has not been done right, but this is thumbing their nose at Council because they have already received a cease-and-desist letter from CAMA last year and they were ordered by Mr. Hardison to stop double stacking boats, but they have kept doing it anyway. Mr. Hodges said the application fails to meet general conditions 1, 2, and 4, and he asked Council to confirm the unanimous recommendation of the Planning and Zoning Commission.

Mr. Richardson passed out information from the UNC School of Government and the State Supreme Court. He said his client's application is to be judged based upon the Town's code of ordinances at the time of submission, not on how some people think the Town's ordinances should be or what future changes may be made. Mr. Richardson said the application has passed the TRC process, and they have heard nothing from staff to suggest the application is deficient in any way under the Town's zoning ordinances. He said if complaints arise about issues such as ADA compliance, his client will have to deal with them in a court of law. Mr. Richardson said much of the testimony focused on parking congestion despite the fact that no traffic impact analysis is required. He said Oceana is causing parking congestion due to the current position that anyone using the parking lot behind the Oceana gate must have a

barcode sticker affixed to their vehicle. Mr. Richardson said before that practice, there were 61 parking spaces off all the neighborhood streets that were available to FBC members and marina patrons in a parking facility that is underutilized. He said Mr. Kemp's report is based upon maxed-out assumptions that will never happen, and none of it is required under the Town's code of ordinances, which is what governs this application process. Mr. Richardson said his client is being blamed for every vehicle being parked outside of the marina facility, even though on-street parking is allowed in this area and there is nothing illegal about people parking at a public park and going to the marina. He said his client can't be blamed for every traffic congestion problem in a place that has grown exponentially. Mr. Richardson said the Land Use Plan indicates the Town should max out water-oriented businesses, and staff says the site plan is consistent with the Land Use Plan. He said there has been no testimony about any measurable diminution in property values around the area, and he questions what's not harmonious about 22 boats being added, all of which will be located on existing finger docks that can accommodate 45-foot boats. Mr. Richardson said his client has no problem eliminating both pontoon boats as a concession, even though there's no requirement in Town code about this common-area space. He said his client is also willing to take the boat docked in front of the houseboat, which is a training vessel, out of the equation and agree to park no more training boats in that space. Mr. Richardson said Ms. Machovec testified that Spinnaker Pointe residents were likely to be the most affected by the smell from the dumpster, but nobody from there has ever testified in opposition to the first permit application or this proposed modification. He said a dumpster truck would have to use the area of Marina Street and Georgia Avenue to access the dumpster in the parking facility irrespective of where it's located.

Mr. Richardson said the marina has been highly scrutinized by Oceana, other surrounding neighbors, and Town staff, so it's not realistic to think they are trying to get away with not complying with zoning ordinances. He said since his client filed this modification application, Oceana has filed three zoning complaints, all of which have been denied by staff and are at various stages of appeal but to date have been found to have no merit. Mr. Richardson said Council has a duty to follow the law, irrespective of how vocal opposition is, and he cited examples to demonstrate that the application must be approved as long as it meets the general conditions and specific standards. He said his client has carried its burden through TRC approval and the presentation of substantial, material, and competent evidence to show why the application satisfies Town ordinances. Mr. Richardson said opponents have not presented substantial, material, and competent evidence but instead referenced mostly hearsay. He said Mr. Kemp's testimony relies upon maxed-out assumptions for boat usage and employees on-site at one time and uses parking calculations that are not required under Town ordinances. Mr. Richardson said Mr. Kemp's report also relied on incorrect information about the amount of time between FBC boat usage shifts. He said there is no evidence to support complaints about fire violations and emergency vehicles not being able to pass through the nearby streets. Mr. Richardson asked Council to follow the law and approve the modification application based on the standards set forth in the law, Town staff's position, and other evidence heard today.

**ACTION:** Motion to close the evidentiary hearing  
Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

Ms. Fox reminded Council Members that their decision must be based on competent, material, and substantial evidence rather than personal preferences, and she said they must disregard evidence that doesn't meet the legal standard.

Mayor Barbee said Council's job is to look at the ordinances that exist and decide if the applicant meets them, regardless of whether or not they like it or how they'd feel if they lived there. He said he does not consider this a change in use, and staff has indicated that the application meets Town ordinances. He said concerns about traffic do not weigh into the decision because what matters is whether witnesses from the opposing side presented evidence that shows the general conditions and specific standards were not met, and he does not think they did.

Council Member Benson said staff determined compliance based on the parking plan submitted with the application, but evidence was discovered during the hearing indicating that plan did not paint a true picture of what should be considered in determining parking requirements, including the true use of the houseboat.

Council Member Healy said he feels there were a lot of gray issues discussed today, including safety concerns because nobody knows what the future will bring. He said the houseboat having only one parking space does not make sense to him, and when you factor in the pontoon boats, the training vessel, Mr. Young's boat slip, and employees of FBC not being in the calculation, he thinks required parking spaces are missing from the calculation. Council Member Healy said he plans to vote for denial based on general condition 2, which states "that the use does not meet all required conditions and specifications."

Council Member Hoffer said he found it difficult to sort through what was legitimate evidence vs. anecdotal testimony. He said he wishes the two parties could've sorted out the parking lot issue before coming to Council. Council Member Hoffer said he thinks the use has definitely changed due to the addition of boats and employees. He said he does not think the modification application meets general conditions 1, 2, and 4 and believes based on the evidence that parking requirement calculations are way off.

Mayor Pro Tem LeCompte said also thinks this is a change of use because this was originally a marina where individuals dock their boats, but it's now turned into a time share. She said based on testimony and evidence, she plans to vote for denial based on failure to meet general conditions 2 and 4 as well as specific standard 5 dealing with landscaping requirements. Mayor Pro Tem LeCompte added that the parties need to work together to solve their issues.

Mayor Barbee asked Mr. Hardison to display acceptable uses in the Marina Business district based on the Town's zoning code.

Council Member Hoffer asked if the number of FBC members given earlier includes people who split memberships. Ms. Fox reminded him that the evidentiary hearing was over.

Mr. Hardison said the Marina Business district allows for a mix of residential and commercial uses, and he read a list of them.

Mayor Barbee asked those who think there is a change of use at the marina to cite what they believe the current use is from that list because he doesn't see it. Council Member Hoffer said a use for boat rentals is on that list. Mayor Barbee asked what is considered the current use for this marina. Ms. Fox said Council will need to reopen the evidentiary hearing if they are going to expect Mr. Hardison to answer questions.

**ACTION:** Motion to open the evidentiary hearing

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

Mr. Hardison said this is a commercial marina, which can provide goods and services to the general public. Mayor Barbee asked if Mr. Hardison is saying that in his professional opinion he does not believe this is a change of use. Mr. Hardison said that is correct, and historically the Town has not calculated additional parking spaces to a charter boat or other commercial business operating inside of a marina beyond the requirement necessary for the slip being occupied, offering the Pedal Pub as an example.

Council Member Hoffer said he thinks the fact that boat sales and rentals are on the list Mr. Hardison read from supports his point that this is a change of use. Mayor Barbee said if it's a change of use, then operating a commercial marina with boat slip rentals or ownership is not allowed anymore. Council Member Hoffer said they are splitting the business in two.

**ACTION:** Motion to close the evidentiary hearing again

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

Mayor Barbee said he sees nothing that tells him they are making a change of use.

Council Member Benson said he goes back to what was presented to TRC and what was discovered today, indicating that the parking requirement is contrary to the number that was given.



Mayor Pro Tem LeCompte said she agrees with Council Member Benson.

**ACTION:** Motion to deny the Special Use Permit presented to Council for the expansion of 20 boat storage spaces in that it does not meet specific standards and general conditions; denial is based on condition 2, that the use does not meet all required conditions and specifications, and 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

Motion made by Council Member Benson

Voting Yea: Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

Voting Nay: Mayor Barbee

*Motion passed 4-1*

Mayor Barbee suggested moving item 3 to Council's next workshop, stating it is just a discussion with no action required.

**ACTION:** Motion to table item 3 until the next workshop

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

## **ITEMS OF BUSINESS**

### 2. Discussion on Sidewalk from Carolina Beach Lake to Carolina Sands

In May 2023, Mr. Oakley was in discussions with N.C. Department of Transportation (DOT) about how the Town could get sidewalks added from Carolina Sands to Lake Park. Later that summer, funding from DOT was earmarked for this project. Several on-site meetings occurred with Town staff and DOT. In November 2023, a plan was given to the Town showing the sidewalk meandering from DOT right-of-way to private property. There were multiple conflicts with power poles, mailboxes, utilities, trash bins, signage, etc. The cost of purchasing the additional needed right-of-way was also a significant concern.

Staff worked with DOT on an alternative that would bump out curb and gutter and avoid all the conflicts. DOT met with Town staff on-site again and determined there was adequate drive aisle width to accomplish this task. However, when the estimate came back to the Town, it was \$1,691,153.08.

Staff talked to Council about this issue, and direction was given to see if the Town could get any aspect of the project completed (i.e. one or two blocks). Staff went back to DOT, and they agreed to look at the costs again on a block-by-block basis.

During the second review by DOT, their field crews identified some discrepancies in the stormwater infrastructure that were shown on their as-built surveys. This discovery allowed them to significantly reduce the costs. They were also able to break down the costs by block.

There are no funds allocated in the current proposed budget for this project, which will be run separately from the resurfacing of Lake Park Boulevard. If approved by Council, the project will be managed by DOT. It must be approved for connecting full-block sections. The proposed total cost of the project is \$640,000, and DOT has agreed to allocate \$183,118. The Town's share would be \$552,882, which includes a 15% contingency.

Mr. Parvin presented the details. He said allowing DOT to manage the project will result in significant cost savings for the Town because this could potentially cost an extra six figures. He said Council must commit funds now, or the DOT share goes away.

Mayor Barbee said he doesn't like hearing the cost of this, but all Council Members have said bike and pedestrian safety is important. He said he thinks the most critical part is getting Spartanburg Avenue, and there will be an opportunity to come back later for the rest. He asked if Council and residents would be willing to raise taxes to do this. Mr. Parvin said taking the money out of the fund balance is another option.

Council Member Healy said it's a matter of public safety.

Council Member Hoffer asked what happens if the Town's share turns out to not be enough. Mr. Oakley said he doesn't know how DOT handles change orders and who would be responsible. Mr. Parvin said he added the 15% contingency to the Town's share because he was concerned about the same thing. He said there is no timeline yet, but he assumes it would happen after the Lake Park Boulevard paving project.

Mayor Barbee said as much as he wants to see a sidewalk go to Carolina Sands and Tennessee Avenue, he's not comfortable spending a half-million dollars. He said he thinks the money is there, but he's uncomfortable being asked to spend this large amount while getting ready to vote on a budget request that he thinks is underfunded.

Council Member Hoffer asked if they could sleep on this. Mr. Parvin said if Council doesn't make a decision today, it should be done during the next meeting.

Mayor Barbee said this project is important enough to him that he's comfortable doing up to section 3, Spartanburg Avenue, for \$242,382, and possibly adding more in the future.

Council Member Hoffer said it's clear how he feels in general about this project, but he has an aversion to voting on things he just saw a few minutes ago.

Mayor Pro Tem LeCompte said this really has no impact on the next budget, so she doesn't have a problem looking at it again at the next meeting.

Mayor Barbee said the consensus of Council is to have this issue on the June meeting's agenda, and he asked everyone to come back with how much of the Town's money in the bank they would be willing to spend on this project.

Mr. Parvin said he will ask DOT about a timeline and who would handle cost overruns.

Council Member Hoffer said he has slight concerns about giving away all the control over this project.

3. Discussion on Canal Drive Flooding Remediation Efforts

(This item was tabled until June 11.)

4. FY 24/25 Town Manager's Budget Message

Mr. Oakley presented the FY 24/25 budget message. He said the proposed budget includes a 2-cent tax increase and 4% rate increase. Mr. Oakley said some projects were cut, but the proposed budget still accomplishes goals set forth by Council. He said it also includes a staff salary increase due to a pay study and a 3% cost-of-living adjustment.

**COUNCIL COMMENTS**

Mayor Pro Tem LeCompte said the Seabreeze celebration is tomorrow at 10:30 AM at South Seabreeze Road and Carolina Beach Road.

Council Member Healy said the Ashley High School boys' baseball team is playing for the State championship on Saturday and the girls' soccer team is playing for the State championship on Friday. He said if they win, he would like Council to celebrate their victory.

Council Member Benson said an official with the U.S. Army Corps of Engineers was in the area yesterday and signaled a commitment to continue to fight for money to dredge the Atlantic Intracoastal Waterway, which includes Snow's Cut, and he acknowledged the cost value of putting the sand on Freeman Park. Council Member Benson also said he spoke to consultant Marc Horstman about a scaled-down \$15,000 study to review a handful of potential properties to explore for infiltration.

Mayor Barbee said the Wilmington Urban Area Metropolitan Planning Organization (WMPO) voted to consider tolling for the Cape Fear Memorial Bridge just for the purposes of seeking funding, and this has resulted in the bridge moving up on the priority list for DOT scoring. He said the State has committed \$60 million or \$70 million and the vote doesn't mean there will be a tolled bridge, but grants and Federal funds may now be pursued. Mayor Barbee said a tolling decision, if needed, won't be for over a year. He also said he thinks the Town is already headed for another tax increase next year, and that concerns him because he doesn't want to do two in a row.

**ADJOURNMENT**

Mayor Barbee adjourned the meeting at 5:15 PM.