

CAROLINA BEACH

Planning and Zoning Meeting

Thursday, March 11, 2021 – 6:30 PM

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



MINUTES

CALL TO ORDER

Chairman LeCompte called the meeting to order at 6:30 PM.

PRESENT

Chairman Deb LeCompte

Vice Chairman Wayne Rouse

Commissioner Jeff Hogan

Commissioner Melanie Boswell (arrived at 6:43 PM)

Commissioner John Ittu

Commissioner Ethan Crouch

Commissioner Todd Piper

ALSO PRESENT

Planning Director Jeremy Hardison

Senior Planner Miles Murphy

APPROVAL OF MINUTES

1. Approval of the Minutes from February 11th, 2021

ACTION: Motion to approve the minutes

Motion made by Vice Chairman Rouse, Seconded by Commissioner Hogan

Voting Yea: Chairman LeCompte, Vice Chairman Rouse, Commissioner Hogan, Commissioner Ittu, Commissioner Crouch, Commissioner Piper

Motion passed 6-0 (Commissioner Boswell not yet present)

STAFF REPORT ON RECENT COUNCIL MEETINGS

Town Council and Other Updates

- 300 Goldsboro Avenue Rezoning – Approved
- Conditional Zoning – Approved
- 160D Final Draft to Attorney – P&Z April
- 5+ 2-Unit Minor PUDs Have Been Applied for Since the Text Amendment
- Staff Has Started the Review of Beach Services and Vending Permits
- 167 Delaware Avenue – BOA Granted a Variance for a Lot Subdivision
- New Mural Installed This Week

Mr. Murphy reported the following statistics for the past month:

Permitting

- 48 permits (renovation, repair, grading, additions, fence)
- 9 residential new construction
- 7 certificates of occupancy
- Over 200 permits received in 2021

Code Enforcement

- 3 complaints received
- 2 resolved

Demos

- 210 Cape Fear Boulevard
- 1406 Snapper Lane
- 1213 Canal Drive
- 206 Carolina Beach Avenue South

New Businesses

- Convenience Store – 11 Pavilion Avenue South
- Golf Cart Storage – 1301 Bridge Barrier Road
- I Love CB, Souvenirs – 915 North Lake Park Boulevard
- Island Vibes, Smoking Paraphernalia and Souvenirs – 915 North Lake Park Boulevard

Coming Up

- Text amendment: Chapter 160D – April/May
- Text amendment: temporary parking lots
- Text amendment: rooming houses
- Sidewalk cafes
- Text amendment: table of permissible uses
- Text amendment: fences
- Text amendment: accessory structures

PUBLIC DISCUSSION

ACTION: Motion to open public discussion

Motion made by Chairman LeCompte

Voting Yea: Chairman LeCompte, Vice Chairman Rouse, Commissioner Hogan, Commissioner Ittu, Commissioner Crouch, Commissioner Piper

Motion passed 6-0 (Commissioner Boswell not yet present)

None

ACTION: Motion to close public discussion

Motion made by Chairman LeCompte, Seconded by Vice Chairman Rouse

Voting Yea: Chairman LeCompte, Vice Chairman Rouse, Commissioner Hogan, Commissioner Ittu, Commissioner Crouch, Commissioner Piper

Motion passed 6-0 (Commissioner Boswell not yet present)

DISCUSSION ITEMS

2. Consider a Text Amendment to Chapter 40 Article VIII Signs

Due to recent case law, Town staff has updated the Town's sign ordinance to comply with the direction that signs, and other similarly managed items, may not be regulated by their content. The ruling allows the regulation of signs by location, size, zoning district, and number but not by what they display.

Town Attorney Noel Fox completed her initial review, and Town staff has made her requested changes in preparation for review.

Mr. Murphy presented the background and details.

Background

- Sign ordinances are utilized primarily for aesthetic and economic purposes
- Free speech generally overrides any state, county, or local sign ordinance
- Sign ordinances may not be "content-based" in almost all circumstances

Supreme Court Decision

- In 2015, the Supreme Court heard the case of Reed v. Town of Gilbert
- The Town of Gilbert had a sign ordinance with 23 exempted categories, and each category was treated differently based on the content
- The Ninth Circuit Court of Appeals initially upheld the exceptions
- The Supreme Court determined that the sign ordinance, and its exceptions, were based on the "face" since the content of the signs dictated their limitations

Local Ordinance Implications

- CB sign ordinance currently has 11 sign categories that are regulated individually and are based on content
 - Governmental
 - Window/door signs
 - Real estate/off-site
 - Political
 - Open
 - Patriotic
 - Government required
 - Construction/future development
 - Subdivision
 - Nonprofits
 - Special events

Revisions

- Addition of location restriction to prevent traffic sight distance triangle obstructions
- Addition of a catch-all category for “temporary non-commercial signage” with regulations pertaining to aesthetics and time frames only
- Remove categories specifically regulating signs by content
- Clarified/corrected language through Article 8

Staff recommends approval of the text amendment.

ACTION: Motion to open the public hearing

Motion made by Chairman LeCompte

Voting Yea: Chairman LeCompte, Vice Chairman Rouse, Commissioner Hogan, Commissioner Ittu, Commissioner Crouch, Commissioner Piper

Motion passed 6-0 (Commissioner Boswell not yet present)

Vice Chairman Rouse asked how a mural is differentiated from a sign. Mr. Murphy said a mural is not a sign if it is unrelated to something that’s being sold at the property where it is located. He said if it features a business name or product, then it’s considered a sign.

Chairman LeCompte asked if the proposed ordinance also covers private residential property. Mr. Murphy said yes, it would be for the entire Town.

Chairman LeCompte closed public discussion.

Commissioner Piper had questions about the size of signs. Mr. Murphy said the proposed text amendment does not change any height or size regulations and focuses primarily on eliminating regulations based on content.

Vice Chairman Rouse asked whether enforcement would be through a fine in the mail, a knock on the door, or some other means. He said he knows of a home-based business owner who has a small sign and wanted to know if she would be told she can no longer have it. Mr. Murphy said if a possible violation is reported to the Town, then staff will take a look to determine if it is actually in violation and if so, there will be a visit to the violator for the purposes of working out a compromise. If the violator is not willing to work with the Town, then the matter would go into the violation phase, he said.

ACTION: Motion that the Commission, whereas in accordance with the provisions of NCGS 160A.383, does hereby find and determine that the adoption of the text amendment to amend Chapter 40, Article VIII to update the sign ordinance to comply with the 2015 Supreme Court decision is consistent with the goals and objectives of the adopted Land Use Plan and other long-range plans

Motion made by Vice Chairman Rouse, Seconded by Commissioner Hogan

Voting Yea: Chairman LeCompte, Vice Chairman Rouse, Commissioner Hogan, Commissioner Boswell, Commissioner Ittu, Commissioner Crouch, Commissioner Piper

Motion passed unanimously

3. A discussion regarding potential changes to the Chapter 40 Article VII - Fences

Mr. Hardison said the purpose of this item was to go over existing fence regulations and receive feedback and direction on potential amendments for consideration at the next meeting. He presented the background and details.

Permit is required

Purpose: Provides standards for the construction, location, and maintenance of fences and ensures that hazardous or nuisance situations do not occur

Regulations – Height

Residential and commercial districts

- No fence shall exceed 6 feet in height (can go higher with what was formerly known as the Conditional Use Permit process)
- No fence shall exceed 4 feet in height when located in the front yard setback (for most of the Town, that is first 20 feet of the property)

Double-Frontage Lot

Mr. Hardison said this situation, which is when a property fronts two streets, commonly occurs in the Carolina Beach Avenue South and South Lake Park Boulevard areas and affects about 70 lots. He said both yards on this type of property are classified as front yards under the current ordinance.

Measure

1. Height shall be measured at the highest point of the fence section to the existing natural grade. The point of measurement shall be along the outside of the fence adjacent to the abutting property.
2. Columns or posts shall not extend more than 18 inches above the built height of the fence.
3. Any retaining wall or berm below the fence shall be considered as part of the overall height of the fence.

Construction Standards

Fences shall be constructed so that the finished (sheathed) side is oriented toward adjoining lots or the public right-of-way

ACTION: Motion to open the public hearing

Motion made by Chairman LeCompte

Voting Yea: Chairman LeCompte, Vice Chairman Rouse, Commissioner Hogan, Commissioner Boswell, Commissioner Ittu, Commissioner Crouch, Commissioner Piper

Motion passed unanimously

Vince Lutheran of 403 Peninsula Drive, who is a builder, said he had some concerns about setback rules for double-frontage lots. He said he currently has a project that has a future road behind it, and the lot will not support a pool if it has to have a 20-foot setback. He said if the intent of the regulations is to maintain a streetscape, he thinks a pool should not be subject to this because it is not a vertical structure and does not hinder the streetscape.

ACTION: Motion to close public discussion

Motion made by Chairman LeCompte

Voting Yea: Chairman LeCompte, Vice Chairman Rouse, Commissioner Hogan, Commissioner Boswell, Commissioner Ittu, Commissioner Crouch, Commissioner Piper

Motion passed unanimously

Commissioner Piper said he thinks things that do not affect the streetscape should be allowed without the larger setback, such as swimming pools, although he would have an issue with accessory buildings being 5 feet from the street. He also said he was not in favor of allowing 6-foot fences along streets, even in double-frontage lot situations.

Vice Chairman Rouse said he agreed with the first part of Commissioner Piper's statements but thinks the orientation of a house indicates what is the front yard and back yard and people should be able to use the property accordingly. He said he does not think 2 feet of fencing will significantly impact how a street looks and that a 4-foot fence was just a designation that does not offer any privacy.

Commissioner Ittu said he agreed with Vice Chairman Rouse that back yards should be treated like back yards, even on double-frontage lots. He said he has seen one example of a new home with a pool on a double-frontage lot with a back fence higher than 4 feet.

Commissioner Hogan said a front yard is designated by a mailbox, house number, and driveway and that property owners should be able to use the other side to have a pool, although maybe not a tall structure. He said he was torn on fence height because taller fences could make a street look like a big wall, but he also recognized that restricting this could be taking away property rights. He said he would have no problem with 6-foot fences in back yards for double-frontage lots.

Commissioner Crouch said the double-frontage lot issue of both yards being considered front yards is applicable to very few lots and should be a separate conversation. He said his intent in bringing up this topic previously was to talk about the 6-foot fence height limit on standard lots. He said he would like the board to consider increasing the height limit to 7 feet and changing the way it is measured. He said the current process uses the existing grade and results in fences that are not straight across and look bad. He suggested using the low point of the property so there is a consistent top fence elevation.

Mr. Hardison said he agreed that how to handle double-frontage lots should be a separate agenda item. He said Town staff has struggled with all of the aforementioned issues and wanted to come up with clarification language for the ordinance.

Chairman LeCompte said the double-frontage lot issue is concerning and needs to be addressed. She said she sees no reason why a double-frontage lot could not have a pool, although she is not in favor of accessory structures close to the road. She said any changes to the ordinance need to extend to future roads so those properties are treated the same as any other double-frontage lot.

Commissioner Crouch said taller fences on double-frontage lots could pose a safety issue and make it harder to back out.

Vice Chairman Rouse said treating back yards on double-frontage lots like front yards puts a burden on the property owner. He said a 2-foot difference in fence height will not make much difference and that it is trying to solve a safety issue at the expense of the property owner. He said he does like Commissioner Crouch's idea of changing the fence height limit to 7 feet on standard lots because people are getting taller and 6 feet is not adequate for some to maximize privacy.

Commissioner Crouch asked the Commissioners for their thoughts on the measurement issue.

Vice Chairman Rouse said he thinks it would be best to use three points.

Mr. Hardison said the average of the grade could be used to determine the point from which to measure fence height.

Commissioner Piper brought up the issue of retaining walls and said more people are building those now.

As background, Mr. Hardison explained that stormwater regulations require a property to be elevated to facilitate stormwater draining to the street and into the Town stormwater system, and to achieve this some property owners are filling in lots in the back to the front to promote flow for drainage.

Commissioner Boswell said she is OK with raising the overall fence height limit to 7 feet, but she thinks where to measure from must be determined first and foremost.

Commissioner Crouch said his suggestion is to measure from the low side so that the top is 7 feet, whether it's a retaining wall or a fence.

Mr. Hardison said Town staff will come back to the board with options for more discussion and a possible vote at the next meeting. He said double-frontage lots will be addressed under a separate agenda item.

Commissioner Boswell asked if fences in the Central Business District have different height restrictions. Mr. Murphy said no, fences are handled the same way in all districts, except commercial districts have a few more allowances for taller fences and in some cases requirements for them. He said properties in the Central Business District technically have setbacks and yards and that fence restrictions don't change in that regard.

NON-AGENDA ITEMS

Commissioner Boswell asked how the Town handles RVs being used as personal residences. Mr. Hardison said RVs can park in a driveway or on a property but can't be lived in outside of a permitted RV lot or campground. Commissioner Boswell said someone brought a potential violation on a residential lot to her attention, but she is not sure if they have filed a complaint with the Town. Mr. Hardison said this issue is addressed in codes and is not allowed, so he can talk to code enforcement to see if this is on the radar or whether it has been reported. Vice Chairman Rouse asked which street this is on. Commissioner Boswell said it's on South Lake Park Boulevard near North Carolina Avenue.

ADJOURNMENT

ACTION: Motion to adjourn

Motion made by Chairman LeCompte

Voting Yea: Chairman LeCompte, Vice Chairman Rouse, Commissioner Hogan, Commissioner Boswell, Commissioner Ittu, Commissioner Crouch, Commissioner Piper

Motion passed unanimously

The meeting adjourned at 7:37 PM.