

CAROLINA BEACH

Board of Adjustment Meeting

Monday, December 18, 2023 - 6:00 PM

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



MINUTES

CALL TO ORDER

Vice Chairman Boykin called the meeting to order at 6:16 PM.

PRESENT

Vice Chairman Patrick Boykin

Board Member Paul Levy

Board Member Ken Thompson

Board Member Tim Howard

ABSENT

Chairman Wayne Hartsell

Board Member Jullena Shelley

ALSO PRESENT

Planning Director Jeremy Hardison

Senior Planner Gloria Abbotts

Board Attorney Matt Nichols

PUBLIC HEARING

To consider an appeal from Sections Sec. 40-425 - Extension or enlargement of nonconforming situations, including land uses and buildings, and Sec. 40-426 - Reconstruction, maintenance, full, or partial demolition and renovation of nonconforming situations.

One of the roles of the Board of Adjustment is to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by staff. The applicant, Oceana Owners Association Inc./Olin Fur, submitted an appeal referencing Sec. 40-425 - Extension or enlargement of non-conforming situations, including land uses and buildings, and Sec. 40-426 - Reconstruction, maintenance, full, or partial demolition and renovation of non-conforming situations.

The appeal was submitted after staff received a complaint against staff and the property owner of an existing non-contiguous parking lot located inside the Oceana subdivision that serves the Carolina Beach Yacht Club and Marina at 401 Marina Street. The complaint specifically addresses the allowed increase in parking space(s) in a non-conforming parking lot. A zoning determination letter was sent to Mr. Furr outlining staff's interpretation of Sec. 40-425.

Non-conforming

A non-conforming situation or use means a situation or use of the property that was in existence prior to a zoning change that would not allow the situation or use to occur under the existing ordinance. Non-conformity allows a landowner that is using land in a certain way prior to the enactment of a zoning ordinance to continue the prior use even if the existing ordinance does not allow for it. An example is a commercial use operating in a residential zoning district may be non-conforming. If a use or situation is considered non-conforming, then the ordinance outlines if and when that use can be expanded.

In the situation with the Carolina Beach Yacht Club and Marina, it consists of two properties. One property is located in commercial zone MB-1 (Marina Business) that has a building with a residential unit, parking lot, marina with slips, fuel dock, and a retail/eating and drinking barge. The Oceana parking lot that is owned by the same entity as the marina is utilized to meet the required parking. This parking lot is zoned R-1B (residential). The parking lot is considered non-conforming because it is existing and would not be allowed under the current ordinance. Non-contiguous parking lots located in residential areas are not allowed to serve commercial uses.

History of the property

- February 1982: A Conditional Use Permit (CUP) was issued for 372 multi-family residential units in a Planned Unit Development (PUD) with a marina that was in one ownership for the land that now consists of Spinnaker Pointe, Oceana subdivision, and Carolina Beach Yacht Club and Marina. The property was all zoned RA-6 at that time.
- 1985: Four multi-family buildings were built, individual units were sold, the common area was dedicated to Spinnaker Pointe homeowners association, the marina had been excavated, and a building was on the site (Carolina Beach Yacht Club and Marina), according to New Hanover County tax records.
- 3/8/94: Phase one Oceana subdivision approved for 32 lots.
- 8/9/94: Marina property was rezoned from RA-6 to MB-1.
- 9/23/94: Phase two Oceana subdivision approved for 17 lots, which created the parking lot and easement to access the boat slips for the marina.
- 1994: Lots were offered for purchase.
- 1996: The property of Carolina Beach Yacht Club and Marina and the parking lot were sold.
- September 2019: The marina applied for a CUP to add an eating and drinking establishment and a ship store located on a barge.
- November 2019: Petition by Oceana Owners Association to appeal the allowance of the use of a non-conforming parking lot. The allowance was upheld.
- January 2020: The CUP was not passed by Council (2-2 vote).
- April 2020: The marina owner filed a petition seeking an appeal.
- May 2020: The Oceana Owners Association filed a verified motion to intervene.
- September 2020: The hearing of the appeal was canceled based upon the parties entering into an agreement and resolution.
- December 2020: The agreement was executed to issue the CUP with conditions.
- 2021: A building permit and site plan approval was issued based on the CUP authorization that depicted 56 parking spaces located in the Oceana parking lot.
- 2023: The marina has applied for a CUP modification to expand boat slips and proposes to add seven parking spaces to the Oceana parking lot.

- 2023: Zoning permit final inspection.

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. This increased the total number of spaces from 56 to 57 parking spaces.

Staff's determination

This appeal is regarding staff's determination that the additional space located in the Oceana subdivision is not allowed under Sec. 40-425 and Sec. 40-426. Sec. 40-425 states that "no increase in the extent of non-conformity, except as specifically provided in this section, it shall be unlawful for any person to engage in any activity that causes an increase in the extent of non-conformity of a non-conforming situation." The section further states that "the increase in volume, intensity, or frequency of non-conforming use may be allowed. The volume, intensity, or frequency of use of 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."

Based on Sec. 40-425, staff's determination is that the extent of the facility has not increased in size, just the volume of the number of parking spaces within the boundary of the facility. It is staff's determination that the non-conforming parking lot is allowed to increase the number of parking spaces within the property boundaries. Sec. 40-426 that was referenced in the appeal is in regard to buildings and structures, and staff does not believe that it applies to a parking lot in this case.

Board action

The Board of Adjustment shall hear and decide appeals for decisions of administrative officials charged with enforcement of the zoning or unified development ordinance. The Board can agree or deny staff interpretation of the ordinance Sec. 40-425 and Sec. 40-426.

Mr. Nichols said he understands the applicant would like to request continuance, so this would be a good time for the Board to hear this.

Wes Hodges, attorney for the Ocean Owners Association, said with only four Board Members present he thinks this substantially increases the likelihood of a 2-2 tie and poses unfairness to the applicant because of the need to get three of four Board Members to agree instead of three of five. He asked that the matter be continued until a full Board is present.

Mr. Nichols said the next available date when all involved attorneys would be available is January 22. He said he feels this is a reasonable request, but it's ultimately up to the Board.

ACTION: Motion for continuance

Motion made by Board Member Thompson, seconded by Board Member Howard

Voting Yea: Vice Chairman Boykin, Board Member Levy, Board Member Thompson, Board Member Howard

Motion passed 4-0

Mr. Nichols said he wants the record to reflect that the matter is being continued until January 22, 2024.

NON-AGENDA ITEMS

None

ADJOURNMENT

ACTION: Motion to adjourn

Motion made by Board Member Howard, seconded by Board Member Thompson

Voting Yea: Vice Chairman Boykin, Board Member Levy, Board Member Thompson, Board Member Howard

Motion passed 4-0

The meeting adjourned at 6:35 PM.