

# CAROLINA BEACH

Planning and Zoning Commission Meeting

Thursday, June 13, 2024 - 6:00 PM

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



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## MINUTES

### CALL TO ORDER

Chairman Rouse called the meeting to order at 6:00 PM.

### PRESENT

Chairman Wayne Rouse

Vice Chairman Jeff Hogan

Commissioner Melanie Boswell

Commissioner Ethan Crouch

Commissioner Todd Piper

Commissioner Bill Carew

Commissioner Lynn Conto

### ALSO PRESENT

Community Development Director Jeremy Hardison

Senior Planner Gloria Abbotts

### CONFLICT OF INTEREST

*Members of Planning and Zoning 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)*

### APPROVAL OF MINUTES

1. March 14, 2024 – P&Z Minutes

**ACTION:** Motion to approve the minutes as written

Motion made by Chairman Rouse, seconded by Vice Chairman Hogan

Voting Yea: Chairman Rouse, Vice Chairman Hogan, Commissioner Boswell, Commissioner Crouch, Commissioner Piper, Commissioner Carew, Commissioner Conto

*Motion passed unanimously*

### STAFF REPORT ON RECENT DEVELOPMENTS

Ms. Abbotts reported the following statistics since March:

Permitting

- 123 permits (renovation, repair, grading, additions, fences)
- 15 residential new construction
- 8 certificates of occupancy

#### Code Enforcement

- 19 complaints received
- 21 resolved

#### Demos

- 606 South 5th Street
- 925 Carolina Sands Drive

#### New Businesses

- Puffy’s Magic Dragon (restaurant) – 304 North Lake Park Boulevard
- Sea Creature Supplies & Rare Goods (retail) – 103 Charlotte Avenue, Unit 100
- Sandal Factory of Carolina Beach (retail) – 6 Harper Avenue and 9 Carolina Beach Avenue North
- Siren Fitness Studio (personal training) – 1003 Bennet Lane, Suite K
- CB Snow Cones – 105 Carolina Beach Avenue North
- Melecios Fiesta Bar 3 (restaurant) – 219 Myrtle Avenue
- Donthemons Irie Items (retail) – 9 South Lake Park Boulevard, Unit A2
- Michaelangelo’s Gelato – 9 South Lake Park Boulevard, Unit A3
- Sunny Daze Smokehouse (restaurant) – 9 Pavilion Avenue South

#### Town Council and Other Updates

- 205 Harper Avenue – denied by Council
- Elevator height text amendment – approved by Council
- Wine and beer shop text amendment – approved by Council
- Low-speed vehicle (LSV) text amendment – approved by Council
- 401 Marina Street Special Use Permit (SUP) modification – denied by Council
- Silver Dollar rooftop bar expansion – upcoming Conditional Zoning (CZ) request

#### **PUBLIC DISCUSSION**

None

#### **DISCUSSION ITEMS**

2. Text Amendment to Chapter 40, Article III Zoning District Regulations, Article V Off-Street Parking and Loading Requirements; Parking, and Article IX Development Standards for Particular Uses to Amend Standards for Wine and Beer Shops  
Applicant: Town of Carolina Beach

Council adopted a text amendment in April of this year to allow for wine shops and beer shops with on-premise alcohol sales as a use in the Marina Business (MB) district by right. However, upon recognizing unintended consequences, there was a need to re-evaluate the ordinance change. Previously, wine

and beer shops were limited to retail and off-premise sales only, until an amendment in April 2023 permitted on-premise sales after an amendment was proposed by a private business.

#### PROPOSAL

Wine and beer shops (on-premise) are currently allowed by right in the Central Business District (CBD), Highway Business (HB), Neighborhood Business (NB), and MB districts. This text amendment proposes to return the wine and beer shop ordinance to the standards that were in place in April 2023. Upon further research, the approved allowance expands the way the Town has treated alcohol permits with establishments being permitted by right for wine and beer and undermines bar regulations.

#### WINE SHOP

The proposed ordinance permits wine shops (on-premise) in the CBD, HB, and NB zoning districts, in alignment with Alcoholic Beverage Control (ABC) regulations. These establishments can sell unfortified wine for on-premise consumption, not exceeding 40% of total sales in any 30-day period, subject to ABC audit.

#### BEER SHOP

Beer shops need to obtain an on-premise malt beverage permit to allow for the retail sale of malt beverages for consumption on- and off-premise without any limitation or percentages to off-premise sales. The existing ordinance allowed for beer shops to be permitted by right in MB and undermined the bar and tavern requirements by allowing on-premise beer sales without CZ. Beer shops are only permitted in NB. To reduce the impacts from the use of adjoining properties, restrictions were adopted for any outdoor or indoor areas to be setback from an adjacent property line or residential use.

The text amendment adopted in April 2023 consisted of defining both uses. Beer shops are defined as an establishment substantially engaged in retail sale of malt beverages on- and off-premises subject to ABC Commission regulations. Wine shops are defined as an establishment substantially engaged in retail sale of unfortified wine and fortified wine for consumption on- and off-premises subject to ABC Commission regulations.

#### PARKING

When the amendment was adopted in April 2023, wine and beer shops were categorized under eating and drinking establishments. Under the existing ordinance, all wine and beer shops were considered retail. This is important because the change of use would trigger a different parking standard. Parking for retail is calculated at one parking space per 200 square feet of retail space. Parking for eating and drinking establishments is calculated at one space per 110 square feet.

#### LAND USE PLAN

While the Land Use Plan doesn't explicitly address wine and beer shops, the proposed amendment aligns with the plan's goals of fostering a healthy year-round economy and maintaining a family-friendly community.

Ms. Abbotts presented the details.

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

Motion made by Chairman Rouse

Voting Yea: Chairman Rouse, Vice Chairman Hogan, Commissioner Boswell, Commissioner Crouch, Commissioner Piper, Commissioner Carew, Commissioner Conto

*Motion passed unanimously*

No one requested to speak.

**ACTION:** Motion to close the public hearing

Motion made by Chairman Rouse, seconded by Vice Chairman Hogan

Voting Yea: Chairman Rouse, Vice Chairman Hogan, Commissioner Boswell, Commissioner Crouch, Commissioner Piper, Commissioner Carew, Commissioner Conto

*Motion passed unanimously*

Chairman Rouse said this issue has already been discussed at length and voted upon unanimously, and his mind hasn't changed since then. He asked if anyone had a change of opinion or discussion to add.

**ACTION:** Motion that the Planning and Zoning Commission, whereas in accordance with the provisions of the North Carolina General Statute, does hereby find and determine that the adoption of the following ordinance amendment to amend Chapter 40, Article III Zoning District Regulations, Article IX Development Standards for Particular Uses, and Article V Off-Street Parking and Loading Requirements for Wine Shops and Beer Shops is consistent with the goals and objectives of the adopted Land Use Plan and other long-range plans

Motion made by Commissioner Piper, seconded by Vice Chairman Hogan

Voting Yea: Chairman Rouse, Vice Chairman Hogan, Commissioner Boswell, Commissioner Crouch, Commissioner Piper, Commissioner Carew, Commissioner Conto

*Motion passed unanimously*

3. Conditional Zoning to Consider a Two-Unit Planned Unit Development at 2 North Carolina Avenue to Reduce the 15-Foot Separation Requirement  
Applicant: Michael Rose Properties, LLC

Michael Rose Properties, LLC, has applied for a CZ application for a Planned Unit Development (PUD) project in the Multi-Family (MF) residential district, proposing two units. While PUDs with four units or fewer are permitted by right, the applicant seeks to reduce the 15-foot separation requirement to 12.5 feet, necessitating CZ approval.

Prior to scheduling a public hearing on the rezoning application, the applicant shall conduct one public input meeting and file a report of such results with the Zoning Administrator. In approving a petition for the reclassification of property to a CZ district, the Commission may recommend that the applicant add reasonable and appropriate conditions to the approval of the petition.

If the applicant does not agree with the Commission's or staff's recommendations of additional conditions, Council shall have the authority to accept none, any, or all of the conditions forwarded from the review process.

## PROPOSAL

The applicant is proposing to construct an additional home on the property at 2 North Carolina Avenue. The project will include two single-family homes. The existing home is a one-story cottage with three bedrooms that was built in 1964. The additional home would be two or three stories with three bedrooms. The purpose of MF is to provide for moderate- to high-density single-family and multi-family residential uses and other compatible uses of varying types and designs. It functions as an alternative housing type near or in direct relationship to single-family detached housing while in harmony with and maintaining the integrity of the residential district.

The maximum lot coverage is 40%, which includes the footprint of the building, decks, and steps. The applicant's proposed total lot coverage equals 1,973 square feet or 36.46%; 25% of the gross acreage of a residential PUD shall be permanent open space. The applicant is providing 2,527 square feet or 50.54%. The structures will not exceed the 50-foot height limit.

The applicant does not meet the minimum separation between structures because structures are defined as anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground. The applicant proposes stairs and landings between the two buildings on the site. The face of each building meets the 15-foot separation requirement, but the setback between the stairs is 12.5 feet. The ordinance states that setbacks may depart from the minimum requirement if there is a recommendation for approval by the Town's Fire Marshal and they meet extra provisions as provided by the Fire Marshal. The departure from the required setback must be recommended for approval or denial by the Commission and formally approved by Council.

The Fire Marshal recommends approval of the staircases in the 15-foot setback area if they are constructed with a non-combustible material. This addresses safety concerns associated with the proximity of structures and ensures compliance with fire safety.

Setbacks in MF are 10 feet (front), 10 feet (rear), and 7.5 feet (sides). HVAC and stairs are permitted to encroach in the minimum setbacks. The proposed structure meets all minimum setbacks for the district. The applicant is providing the minimum required three parking spaces per unit for a total of six parking spaces. No landscape buffer is required for a two-unit PUD. The maximum density in MF is 17 units/acre. The total density allowed on this 5,000-square-foot lot is two units. The driveway width at the property line may not exceed 36 feet.

## CZ PROCESS

As part of the application process, a community meeting is required. The applicant held the required meeting on April 23, 2024. The applicant has provided summary comments from the meeting. Based on the comments from the meeting, the applicant can place conditions on the project to help mitigate the impacts and concerns from neighboring properties.

## PROPOSED CONDITIONS

1. All Federal, State, and Local ordinances shall be met.
2. Stairs and landing shall be constructed of non-combustible materials.

## RECOMMENDATION

Staff recommends approval of the project as proposed.

## LAND USE PLAN

The project is in general conformity with the 2020 Land Use Plan for Medium Density Residential: mostly medium-sized lots (minimum 5,000 square feet) with primarily single-family detached residences.

Ms. Abbotts presented the details. She reviewed surrounding uses and history of the property and showed the proposed site plan. Ms. Abbotts said two people attended the community meeting, and there were no concerns brought up or changes to the plan made as a result.

Commissioner Conto said there is a deck within the 12.5 feet and asked if that will be removed. Ms. Abbotts said they will be removing a portion of the existing deck to accommodate for a larger separation there.

Commissioner Carew asked if both buildings by right could be as high as 50 feet each. Ms. Abbotts said yes.

### **ACTION:** Motion to open the public hearing

Motion made by Chairman Rouse, seconded by Vice Chairman Hogan

Voting Yea: Chairman Rouse, Vice Chairman Hogan, Commissioner Boswell, Commissioner Crouch, Commissioner Piper, Commissioner Carew, Commissioner Conto

*Motion passed unanimously*

Chairman Rouse asked if the applicant would like to speak.

Michael Rose, owner of the property, said they want to put stairs and a landing on the side to enable people to park underneath instead of in between buildings, and this also enables them to not go as high because they don't want to block neighbors. He said if they can't put the stairs on the side, the width of the building footprint would only be 21 feet and would not allow parking underneath.

No one else requested to speak.

### **ACTION:** Motion to close the public hearing

Motion made by Chairman Rouse, seconded by Vice Chairman Hogan

Voting Yea: Chairman Rouse, Vice Chairman Hogan, Commissioner Boswell, Commissioner Crouch, Commissioner Piper, Commissioner Carew, Commissioner Conto

*Motion passed unanimously*

Commissioner Carew said while the applicant may not intend to do a height of 50 feet, there is no guarantee about what could be done in perpetuity. He asked if there may be any resulting unintended consequences.

Commissioner Crouch said CZ approval would stay with the land, so any approved additional conditions would be required even if they sell the parcel.

Chairman Rouse asked if the existing structure was ever destroyed whether the property owner could put a new structure there with a 50-foot height. Mr. Hardison said that would be deemed a major modification and would have to come back through the process for tearing down and rebuilding.

Commissioner Boswell asked if the property owner could build up on the existing structure up to 50 feet by right. Mr. Hardison said there are some trigger points that would kick in, such as whether it would require another parking space.

Commissioner Piper said he understands the applicant's intent to maximize use of the land and appreciates that he's not trying to reach 50 feet. He said most of the questions Commissioners have rest on what the applicant's long-term intention is for the original cottage on the site.

Mr. Rose said it's not feasible to build up on the cottage due to the age of the structure. He said there are no plans to do anything with it, and the goal is to build the new home behind it and see over it. Mr. Rose said if something happened to the cottage down the road and it's not worth fixing, he could build a sister house like the one he is proposing, which would have a smaller base footprint than the existing house. He said he intends for the proposed house to be his last project, and he plans to live in the new house and do short-term rentals in the old one.

Commissioner Crouch asked if the four required trees would go on the north side of the property. Ms. Abbotts said the ordinance requires one tree per 25 square feet of frontage, but they can be anywhere on the lot. Mr. Rose said they already have four trees, and Ms. Abbotts said existing trees would count.

Commissioner Carew said there are enough triggers on the cottage that no matter what happens it would come through CZ again, so he doesn't think there's an issue.

**ACTION:** Motion to close the public hearing

Motion made by Chairman Rouse, seconded by Vice Chairman Hogan

Voting Yea: Chairman Rouse, Vice Chairman Hogan, Commissioner Boswell, Commissioner Crouch, Commissioner Piper, Commissioner Carew, Commissioner Conto

*Motion passed unanimously*

Commissioner Carew said this looks like a good project, and he doesn't see any unintended consequences with approving it.

Commissioner Piper said he's fine with it.

Vice Chairman Hogan said he's good with it also.

Commissioner Conto said she agrees with the previous comments.

Commissioner Crouch said because this is a CZ application, Commissioners have the opportunity to place conditions upon the applicant. He said if the Town is giving up some of the setback, they may want to take the opportunity to require additional landscaping or other conditions.

Chairman Rouse asked if a height restriction could be put on the original structure. Mr. Hardison said this would be possible if the applicant would agree to it. Chairman Rouse asked Mr. Rose if he would agree to a height limit on any new structure in the future where the existing cottage is now. Mr. Rose said this is a question he hadn't considered, and he is concerned that limiting the height of the oceanfront house could be problematic because if it got wiped out, it wouldn't make any sense to build a one-story house there due to the land being so valuable.

Vice Chairman Hogan asked if Mr. Rose would agree to not going above what the height of the new structure is. Mr. Rose said he was OK with that.

Commissioner Boswell asked what the height of the proposed house is. Mr. Rose said he doesn't know yet because he can't design a house until he knows if he has CZ approval. He described his preliminary plans floor-by-floor, and Commissioner Piper said 44 feet is what he determined to be the height.

**ACTION:** Motion that whereas in accordance with the provisions of the North Carolina General Statute, the Planning and Zoning Commission does hereby find and determine that the adoption of the Conditional Use District to allow for a second-unit townhome project located at 2 North Carolina Avenue is consistent with the goals and objectives of the adopted Land Use Plan and other long-range plans and the potential impacts on the surrounding area are mitigated by the approved condition with the agreement that the applicant agrees that the original structure will not exceed the new structure if it has to be rebuilt

Motion made by Vice Chairman Hogan, seconded by Chairman Rouse

Voting Yea: Chairman Rouse, Vice Chairman Hogan, Commissioner Boswell, Commissioner Crouch, Commissioner Piper, Commissioner Carew, Commissioner Conto

*Motion passed unanimously*

#### 4. Final Draft – Unified Development Ordinance

Wes MacLeod of Cape Fear Council of Governments presented a draft of the Town's first Unified Development Ordinance (UDO). To create this, the respective chapters relating to land use (Chapters 30, 32, 36, and 40) contained in the Town's General Code will be repealed and the existing relevant language incorporated into the new UDO. This ordinance process began in July 2022, with the first Commission meeting held in October 2022. An audit of all existing land development ordinances was completed to identify areas in need of change.

The editorial draft contains strikethrough (language proposed for deletion) and underline (new language) formatting. A public hearing held before the Commissions and Council is required prior to adoption.

The following items have been completed as part of the draft update:



- Updates and modification for overall organization and clarity. Reduction in overall text and clarification of many ambiguous and unclear provisions.
- Consolidation of procedures, roles, responsibilities, and administrative items into one article (Article 2).
- Revision to the table of permitted uses to consolidate use types where feasible and incorporate additional uses required by case law or North Carolina General Statutes.
- Establishment of impervious coverage limit of 65% for all zoning districts, with the exception of HB, CBD, and T-1. The 65% limit is based upon an assessment of existing site conditions throughout the Town’s planning jurisdiction.
- Restriction on the use of site fill to raise the elevation of a lot. The placement of fill is restricted to one foot above the crown of the adjacent street or alley. An exception is provided for lots impacted by tidal flooding. The CBD and HB zoning districts are exempt from this requirement.
- Consolidation of development standards such as fences, parking, sidewalks, and driveways into one article (Article 3).
- Update to off-street parking requirements to allow up to 20% of the required parking spaces to be utilized for golf cart or LSV parking.
- Restriction of the use of private streets in future subdivisions.
- Removal of the allowance of bonding or financial guarantees for the installation of infrastructure.
- Update to the Wireless Article in accordance with North Carolina General Statutes.

Mr. MacLeod said administrative changes were also incorporated into the UDO.

Chairman Rouse thanked Mr. MacLeod for his assistance with this task.

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

Motion made by Chairman Rouse, seconded by Vice Chairman Hogan

Voting Yea: Chairman Rouse, Vice Chairman Hogan, Commissioner Boswell, Commissioner Crouch, Commissioner Piper, Commissioner Carew, Commissioner Conto

*Motion passed unanimously*

No one requested to speak.

**ACTION:** Motion to close the public hearing

Motion made by Chairman Rouse, seconded by Vice Chairman Hogan

Voting Yea: Chairman Rouse, Vice Chairman Hogan, Commissioner Boswell, Commissioner Crouch, Commissioner Piper, Commissioner Carew, Commissioner Conto

*Motion passed unanimously*

**ACTION:** Motion that the Planning and Zoning Commission recommends adoption of the proposed repeal of Land Use Chapters 30, 32, 36, and 40 and the adoption of the Town’s first Unified Development Ordinance to the Town Council and finds that it is consistent with the Town’s comprehensive plan, 2020 CAMA Land Use Plan, and all other applicable plans and policies adopted by the Town which includes the following action step: review existing zoning districts, dimensional standards, regulations, and land development regulations and that it is in the public interest because it

will advance the public health, safety, and/or welfare of the Town of Carolina Beach

Motion made by Vice Chairman Hogan, seconded by Chairman Rouse

Voting Yea: Chairman Rouse, Vice Chairman Hogan, Commissioner Boswell, Commissioner Crouch, Commissioner Piper, Commissioner Carew, Commissioner Conto

*Motion passed unanimously*

Chairman Rouse said this is quite a significant milestone for the Town, and he thanked staff for their work. Mr. Hardison said he appreciates all the Commissioners for showing up and giving input.

Chairman Rouse said he'd also like to thank the Commissioners because they don't get paid and this task was beyond their typical responsibilities, requiring many extra hours.

### **NON-AGENDA ITEMS**

None

### **ADJOURNMENT**

**ACTION:** Motion to adjourn the meeting

Motion made by Chairman Rouse, seconded by Vice Chairman Hogan

Voting Yea: Chairman Rouse, Vice Chairman Hogan, Commissioner Boswell, Commissioner Crouch, Commissioner Piper, Commissioner Carew, Commissioner Conto

*Motion passed unanimously*

Chairman Rouse adjourned the meeting at 6:45 PM.