

CAROLINA BEACH

Town Council Regular Meeting

Tuesday, April 9, 2024 - 6:00 PM

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



MINUTES

CALL TO ORDER

Mayor Barbee called the meeting to order at 6:00 PM, followed by the invocation by Mayor Pro Tem LeCompte and Pledge of Allegiance.

PRESENT

Mayor Lynn Barbee
Mayor Pro Tem Deb LeCompte
Council Member Jay Healy
Council Member Joe Benson
Council Member Mike Hoffer

ALSO PRESENT

Town Manager Bruce Oakley
Assistant Town Manager Ed Parvin
Finance Director Debbie Hall
Town Clerk Kim Ward
Town Attorney Noel Fox

ADOPT THE AGENDA

ACTION: Motion to adopt the agenda as presented

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

CONSENT AGENDA

1. Set a Public Hearing for May 14, 2024, to Consider a Special Use Permit Modification for Additional Boat Storage Spaces Located at 401 Marina Street PID 313115.74.1321.000, 313115.64.9002, and 313115.64.8036 in the Marina Business MB-1 and R-1B District
Applicant: CBYC LLC
2. Notice of Committee Member Expiration Dates
3. Room Occupancy Tax (ROT) Funding Reimbursement Approval Request
4. Budget Amendments/Transfers
5. Approval of Council Meeting Minutes

ACTION: Motion to adopt the consent 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

SPECIAL PRESENTATIONS

6. Events Update by Tim Murphy

Tim Murphy, Recreation Programs Superintendent/Community Events Coordinator, reviewed upcoming events:

- Brandy Myers Memorial Playground Ribbon Cutting – April 10 at Lake Park
- Paddles for Pedals Pickleball Tournament – April 13 at Mike Chappell Park
- Fancy Pants Croquet Soiree – April 14 at Mike Chappell Park
- Tinted Turtle Trot – April 21 at Mike Chappell Park
- Island Women Flock of Food Trucks – May 4 at Lake Park
- Beach Wrestling Tournament – May 11 at the Boardwalk
- Carolina Beach Market – begins May 25 at Lake Park and continues every Saturday through September 28
- Movies at the Lake – begins May 26 and continues every Sunday through September 1
- Family Night – begins June 13 at Lake Park and continues every Tuesday through August 20
- Boardwalk Bingo – begins May 22 at the Gazebo and continues every Wednesday through August 28 (with the exception of July 3)
- Fireworks/Music – begins Friday, May 24, and continues every Thursday through the season with the exception of July Fourth (Wednesday, July 3) and Labor Day (Friday, August 30) shows

Regarding filming updates, Mr. Murphy said the Town has received an application for a project called “Merv.” He said the dates are still being finalized, but they are planning to set up on Cape Fear Boulevard and Lake Park Boulevard and will take over the hotel there for a few days. Mr. Murphy said they also would like to set up their base camp in the Rec Center parking lot, and staff is finalizing details to see if they can be accommodated. He said there will also be some filming at the Boardwalk and told everyone if they see a sign for a dog beach, it is fictional. Mr. Murphy said there are no plans for major road closures, but there may be some traffic control on Lake Park Boulevard. He said there will be updates as soon as specifics are available.

Mayor Barbee said the Centennial Celebration unofficially kicked off this afternoon with the unveiling of the first Venus flytrap statue.

Mayor Pro Tem LeCompte reminded everyone about the Seabreeze historical marker dedication ceremony on May 31. She said the event is free but asked people to RSVP so they can get an estimated head count.

Mayor Barbee said the official proclamation date for the Centennial Celebration is March 6, 2025. He thanked the Centennial Committee and Pleasure Island Chamber of Commerce for their work.

7. Proclamation for Safe Boating Week – May 18-24, 2024

The local US Power Squadron chapter requested that Council support National Safe Boating Week by issuing a proclamation setting May 18-24 as Safe Boating Week. Lt. David Parker of Cape Fear Sail & Power Squadron talked about the importance of wearing life preservers from dock to dock and showed an example of a self-inflatable version that boaters are much more likely to keep on all day than the bulky orange kind often stored on boats.

Mayor Barbee read Proclamation No. 24-2303 recognizing May 18-24 as Safe Boating Week.

8. Manager's Update

Mr. Oakley reviewed the calendar for the FY 24-25 budget:

- Community Input Public Hearing – April 9
- Budget Workshop – April 23
- Budget Workshop (if needed) – April 30
- Budget Open House – May 7
- Revenue and Expense Projections – May 14
- Budget Message and State of the Town Presentation – May 28
- Budget Adoption – June 11

Mr. Oakley also gave an update on various projects:

- Brandy Myers Memorial Playground: The entire 4th-grade class at Carolina Beach Elementary School has been invited to participate in the April 10 ribbon cutting.
- Lake dredge and stabilization: Dredging is complete, and final grading and sodding are now being done. The project will come to an end soon.
- Marina: Contractors are pulling electrical on the west side now, and that is the last item on the list. The project will be completed ahead of schedule.
- Ocean Boulevard sidewalk: The Town is having to re-engineer an aspect of the project and is waiting for the N.C. Department of Transportation (DOT). The hope is that work can begin soon.
- Paving projects: Work should begin sometime next week.
- Repairs on Carolina Beach Avenue North: Lowering of the meter boxes is now underway.

Council Member Hoffer asked about the mini paver. Mr. Oakley said the hot box is in place, and staff training will begin later this month. He said a demonstration for Council is planned.

Council Member Healy asked about the trash pickup robot. Mr. Oakley said a Coastal Area Management Act (CAMA) permit has been secured to use BeBot after big summer holidays. Mayor Barbee said this is sponsored by Keep New Hanover Beautiful, an affiliate of Keep America Beautiful, but the Town is supportive of the project.

Mr. Oakley said the first meeting of the Bike/Pedestrian Steering Committee is tomorrow, when work will begin on the updated Bike/Pedestrian Plan.

PUBLIC COMMENT

Erika Robertson of Lanier Landing Court spoke in support of Neapolitan's text amendment request. She

said this would help to enhance the cultural and economic fabric of the community and foster an environment where local businesses can survive and thrive.

Carroll Kratzer of 416 Spartanburg Avenue spoke in support of Neapolitan’s text amendment request. He said this would provide a place for people to have a glass of wine or beer on premises and help to enrich the culture of the Town.

Billy Cooley of 414 Atlanta Avenue said he is all for beer and wine. He said the stop sign at 5th Street and Atlanta Avenue cannot be seen at night due to a lack of reflectivity. Mr. Cooley requested a crosswalk on North Lake Park Boulevard near Town Hall. He also mentioned that he is not in favor of the proposed new hotel because he believes the scale is way off, the design is lazy, and it offers nothing special to reflect the character of the Town.

Jaci Ponzoni spoke in support of Neapolitan’s text amendment request. She encouraged the Town to help the owners figure out a path that will allow them to pour beer and wine and said the business is an asset to the community.

Natalie Gamble spoke in support of Neapolitan’s text amendment request. She said it’s important for the community to allow expansion of diverse small businesses and questioned the need for requiring more parking at a place where alcohol is served, suggesting that the Town instead encourage non-motorized transportation, taxis, and ride shares.

Dena Balbach of 110 Balbach Lane spoke in support of Neapolitan’s text amendment.

PUBLIC HEARINGS

9. Public Hearing to Receive Public Input on the 2024/2025 Budget

Council offered an opportunity for the public to express their interest in what they would like to see in the FY 24-25 budget to assist staff in preparing numbers to present at the May public hearing.

ACTION: Motion to open the public 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

Paul Levy of 1606 Mackerel Lane said the parking lot at Alabama Avenue on the beach side is completely falling apart. He hopes the Town will find money for it in an upcoming budget.

Kristen Dunn of 907 Ocean Boulevard would like the Town to budget for Mark Hortsman to conduct a feasibility study to get big environmental grants. She said he has presented information to Council, but the public never heard anything else about it.

Cindy Dunn of 915 Tidewater Lane, Chairman of the Town’s Beautification Committee, said she would like to see money for the committee to do general beautification projects around Town and the welcome sign.

No one else requested to speak.

ACTION: Motion to close the public 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. Oakley said the budget open house would be a good opportunity for the public to ask questions and make suggestions.

10. Zoning Map Amendment to Consider a Request to Rezone 204 Harper Avenue from Mixed Use (MX) to Central Business District (CBD)
Applicant: STLNC LLC

Applicant STLNC LLC has submitted a petition to consider rezoning 204 Harper Avenue from Mixed Use (MX) to Central Business District (CBD) zoning. The neighboring property to the east is under the same ownership, formerly Welcome Inn (205, 207, and 209 North Lake Park Boulevard), and is currently in the CBD. The applicant has requested the rezoning to have consistent zoning and land uses for the entire property so all business-related decisions and operations fall under the same zoning guidelines.

For consistency and the purpose of redevelopment, it is best practice for the entirety of a property to be within the same zoning district. Redevelopment of the property would require recombination of the property. One of the standards for creating zoning districts is to follow plotted lot lines. Guidance for the interpretation of zoning district boundaries comes from Section 40-45 of the zoning ordinance. Previously, 204 Harper Avenue had a single-family structure, and the adjacent common ownership parcels were formerly Welcome Inn. The adjacent use to the west is single-family, to the north is a multi-family structure, and across the street to the south is a hotel.

HISTORY

The property has been in the same ownership for over 50 years. The single-family house and Welcome Inn were built in the 1930s. In 2023, the structures were demolished after a new hotel was approved for the site in 2022. The hotel has not started construction, and the property was recently purchased. The permit for the hotel authorization will expire September 14, 2024.

The 1984 zoning ordinance and zoning map had both properties, 204 Harper Avenue and the property where Welcome Inn was, in the B-1: Central District. In 2000, 204 Harper Avenue was rezoned to MX, and the Welcome Inn property was rezoned to CBD.

DISTRICT PURPOSE AND PERMITTED USES

MX was established to provide for an area of transitional land uses between intensified use districts or elements and residential districts. This district includes an area of mixed land uses between the intensive, commercial, central part of Town and the quiet residential areas and may also be employed as a transitional area between busy major thoroughfares and quieter residential areas. Permitted uses include a mixture of single-family homes, 2-family dwellings, and small-scale office and institutional uses. Small hotels and motels and multi-family housing of modest density and size may also be permitted in this district.

CBD was established to accommodate, protect, rehabilitate, and maintain the traditional CBD and Boardwalk area of the Town. This area accommodates a wide variety of pedestrian-oriented commercial and service activities, including retail, business, office, professional financial, entertainment, and tourism. The regulations of this district are intended to encourage the use of the land for concentrated development of permitted uses while maintaining a substantial relationship between land uses and the capacity of the Town's infrastructure.

MX does allow for certain business uses such as standard restaurants and eateries, general retail, offices, and mixed-use commercial/residential but does not allow for more intense uses such as bars and taverns or commercial parking lots. MX is considered residential, and residents must abide by the standards of the noise ordinance for residential areas of a daytime level of 65dB(A) between the hours of 7:00 AM and 11:00 PM and the nighttime level of 55dB between the hours of 11:00 PM and 7:00 AM. CBD allows for a 75dB(A) daytime level between 7:00 AM and 11:00 PM and 65 dB(A) between the hours of 11:00 PM and 7:00 AM, except on Friday and Saturday when the daytime levels shall remain in effect until midnight.

DIMENSIONAL STANDARDS

MX requires setbacks and has a maximum lot coverage in all areas throughout the district. Much of the CBD has no setback or lot coverage requirements. Although the dimensional standards for both districts are different, a property in the CBD must have a rear and side setback that is the same as the residential zoning district it abuts. Landscaping standards are also required if a CBD parcel is adjacent to residential to mitigate the transition between the business and residential use.

LAND USE PLAN

The property is shown on the Future Land Use Map as Mixed Use Commercial and is described as a higher-density area with a mix of uses, within the district and individual buildings. Residential uses are allowed only on upper stories; ground floor is encouraged to be active. 4- to 5-story structures are possible, unless a property is adjacent to low- or medium-density residential with attractive street facades. NCGS 160D states that if a zoning map amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment has the effect of also amending any Future Land Use Map in the approved plan, and no additional request or application for a plan amendment is required.

The Planning and Zoning Commission recommended approval of the rezoning from MX to CBD.

Planning Director Jeremy Hardison presented the details, including a review of the history of the property, surrounding uses, and permitted uses in each zone. He said to his knowledge, the current applicant has no intention of continuing with plans for a hotel on the site.

Mayor Barbee asked if the easement for the neighboring property is permanent. Mr. Hardison said it was granted when the Welcome Inn was there, and the proposed hotel honored it. He said the easement would remain in place unless the owner of the house agreed to terminate it.

ACTION: Motion to open the public 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

Attorney Ned Barnes of 814 Carolina Beach Avenue North, who represents the applicant, reviewed ways he contends the proposed rezoning is consistent with the Land Use Plan. He said the rezoning would bring the property into conformity with adjacent lots that are zoned CBD, offering compatibility with the surrounding area, and it would not impact public services and safety. Mr. Barnes mentioned similar successful rezoning requests, such as Kindred Weddings & Events. He said there are no specific plans for the property right now, but the applicant hopes it can be zoned consistently as CBD.

Billy Cooley of 414 Atlanta Avenue said changing the property to CBD is a slippery slope that could ruin the residential nature of the area. He said approving the rezoning request without knowing what is planned for the property would be a mistake.

Melenni Balbach of 106 Balbach Lane said she would like to see the potential conflict of interest that was discussed in a recent news article resolved before any decisions are made.

No one else requested to speak.

ACTION: Motion to close the public 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

Mayor Barbee asked Ms. Fox to explain the legal criteria for Council Members regarding making disclosures or recusing themselves from what may be deemed a potential conflict of interest. Ms. Fox said Council Members have a duty to vote on a zoning amendment unless it offers a direct, substantial, readily identifiable financial impact or a close familial relationship with the applicant exists. No one spoke up, so Mayor Barbee said there is no conflict of interest.

Council Member Benson said comparing this request to Kindred is different because Council knew what was coming after the fact with Kindred. He said plans for this property are all hypothetical and wide open at this point.

Council Member Healy said he worries about expanding the CBD westward and that there has to be a stopping point.

Mayor Pro Tem LeCompte said those 4 pieces of property have been conveyed together since 1977.

Council Member Hoffer said he regrets going along with the rezoning request for Kindred and worries about an ever-marching-westward CBD. He said neighbors also have property rights, and they make life choices based on what is going on around them at the time of purchase. Council Member Hoffer said the applicant should build within the zoning they already have, and he's glad there is not a project planned for this property because Council should look at the request independent of any plans.

Mayor Barbee said he has some of the same concerns that have been mentioned.

Council Member LeCompte said the previous owner did not ask for a change of zoning when planning a hotel on the site.

Council Member Benson said maintaining the transition of the MX district is important.

Mayor Barbee said he assumes the adjacent property owner does not object to the rezoning request because he has not heard otherwise.

ACTION: Motion that whereas in accordance with provisions of the NCGS, Council does hereby find and determine that the adoption of the Zoning Map Amendment for 204 Harper 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 conditions

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Council Member Healy

Voting Nay: Mayor Pro Tem LeCompte, Council Member Benson, Council Member Hoffer

Motion failed 2-3

11. Text Amendment to Amend Chapter 40, Section 40-74 Dimensional Standards for Lots and Principal Structures
Applicant: North Pier Holdings LLC

Applicant North Pier Holdings LLC is applying for a text amendment to allow an elevator to exceed the 50-foot height limitation in the R-1 zoning district. The applicant owns 1800 Canal Drive, which is located within R-1. The condominium structures located on this lot were constructed beginning in 1984 and 1985 and consist of 2 cosmetically attached but structurally independent three-level piling-supported wood-frame buildings. Combined, the structures contained 42 individual residential units. To date, a building permit has been issued for the renovation and repair of the buildings and to add 4 penthouse units to the top of building 2, the reconstruction of breezeways, and the relocation of elevators and staircases. The proposed number of units overall decreased from 42 units to 40 units.

The reason for the proposed text amendment to the Town's building height is due to complications during the construction process and the existing non-conforming status of the building. The applicant added a 4th story onto one of the buildings, which increased the structure height from the existing 37 feet to 50 feet. According to the applicant, the text amendment was needed because it was discovered after the penthouses had been added that the elevator shaft would need to exceed 50 feet to be able to service the 4th-floor penthouses.

PROPOSAL

The applicant proposes changing this section to allow the height of a structure to exceed the maximum height allowed by up to 8 feet for multi-family structures in the R-1 zoning district if they have more than 35 units. The height allowance would pertain specifically to the installation or expansion of an elevator to accommodate the shaft and not equipment.

HISTORICAL CONSIDERATIONS

Prior to 2002, the Town allowed a building height of 35 feet with an additional allowance for roof pitch, chimneys, decks, walkways, or any other pertinent structure. In 2002, Council changed the allowable building height to no more than 50 feet (including all appurtenances) in some zoning districts for uniformity and ease of ordinance implementation by staff. Council agreed anything above 50 feet will require sprinkler systems and must be reviewed and approved under a Conditional Use Permit by Council.

LAND USE PLAN

The proposed text amendment is not in general conformity with the Town's 2020 Land Use Plan. The building height text amendment proposal is in opposition of the Redevelopment section of the 2020 Land Use Plan: "Increased building heights (especially in or near the downtown area) may conflict with the character of existing areas." Additionally, in the Family Friendly Community section of the Land Use Plan, lower structure heights are viewed as a contributing factor to a family-friendly community.

The Planning and Zoning Commission recommended denial of this text amendment proposal and 3 others that have since been dropped from the request. Town staff also recommends denying the proposed text amendment, but if Council is considering changing the ordinance then staff has provided some recommended amendments.

The applicant's previous request was for multi-family structures with more than 10 units in the R-1, T-1, and MF zoning districts, but it has since been amended to address concerns brought forth at the Commission's public hearing.

Planner Haley Moccia presented the details, including staff concerns:

1. Directly contradicts the historical standard for building height being limited to 50 feet, with the exception of some commercial zoning districts.
2. The use of "more than 35 units" is an arbitrary number. Based on the proposed ordinance, there is 1 existing building located in R-1 with more than 35 units.
3. Anything over 50 feet in the current zoning ordinance is required to be approved by Conditional Zoning (CZ). The ordinance they propose would allow the approval of an elevator to exceed 50 feet without CZ approval.

Council Member Benson asked if this matter has come before the Board of Adjustment. Ms. Moccia said the applicant sought variances for a few items, including building height, but the requests did not meet the 4 required criteria and were denied so now they are seeking to amend the ordinance.

Mayor Pro Tem Healy asked if this has to go back to the Commission since it has changed significantly from what that group already heard. Mr. Oakley and Ms. Fox said Council has discretion about whether it should go back to the Commission or be voted on tonight.

ACTION: Motion to open the public 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

Attorney Sam Potter of Wilmington, who represents the applicant in their attempts to remedy the elevator issue, said they modified the request after hearing feedback and concerns from the Commission. He said the building height dilemma due to the elevator is the one issue that makes or breaks this project, and he asked Council to hear the request and act on it tonight rather than sending it back to the Commission. Mr. Potter said this all boils down to 5 feet and 4.75 inches due to a mistake made by the architect, and he contended that the text amendment would not pose a major impact on the surrounding buildings and people. He said granting the request would allow a path forward for reuse or renovation of existing structures and make the building safer and more accessible. Mr. Potter said the building will either have an elevator or it won't, and it's good policy for the Town to allow buildings to have an elevator.

Paul Levy of 1606 Mackerel Lane, who is on the Town's Board of Adjustment, said the rationale for rejecting the building height variance request can be found in the Town's record of that Board of Adjustment meeting.

Billy Cooley of 414 Atlanta Avenue said he and others who live in the area don't like the applicant putting signs up high that can be seen all the way down Canal Drive.

No one else requested to speak.

ACTION: Motion to close the public 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

Mayor Barbee the current proposal feels like spot zoning because it's limited to one property. Ms. Fox said it's not a rezoning, and any change would apply to the entire R-1 zone.

Council Member Healy said the applicant has made a significant investment in improving this property, and he thinks the elevator shaft will help the handicapped and elderly. He believes the current request shows that the applicant listed to Commission concerns.

Mayor Barbee said the main reason for limiting building height is density and keeping the number of units down, but this project does not add density and actually reduces it slightly.

Council Member Hoffer said tonight's request is significantly different from what he has been studying. He said the current proposal feels like they are asking to change the ordinance in such a way that it only applies to this one building, although it's not necessarily a deal breaker for him.

Council Member Benson said the proposal feels like a variance request.

Council Member Hoffer said an elevator would've served 3 levels within the height limit, but the project put in penthouses on the 4th floor.

Mayor Barbee said short-term rentals with elevators are hard to find, and although he doesn't like going over 50 feet, he feels like it will not be an issue in this instance because it's not blocking anyone's view. He said the applicant is putting a product on the market that benefits the community, and encouraging elevators is a good thing for the Town.

Council Member LeCompte said she appreciates rejuvenation of that property and not tearing it down, and she also understands the need for accessibility.

ACTION: Motion for approval that Council, whereas in accordance with provisions of the NCGS, does hereby find and determine that the adoption of the following ordinance amendment to amend building height Section 40-74 Dimensional Standards for Lots and Principal Structures is consistent with the goals and objectives of the adopted Land Use Plan and other long-range plans

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

12. 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: Neapolitan Enterprises Inc.

Applicant Neapolitan Enterprises Inc. is proposing a text amendment to allow for wine shops and beer shops with on-premise alcohol sales as a use in the Marina Business (MB) district by right. The wine and beer shop on-premise use was adopted in April 2023 after an amendment was submitted by a private business. Prior to that, the ordinance only allowed for wine and beer shops with retail and off-premise sales of alcohol.

PROPOSAL

Neapolitan is located in MB. The business currently has an off-premise wine and malt beverage permit. The applicant is seeking an on-premise wine and malt beverage permit at this location. Neapolitan is currently permitted as a retail establishment. For allowances of on-premise wine and malt beverages, the current ordinance categorizes the use as either a standard restaurant or bar in MB. Wine and beer shops are currently not allowed in MB.

WINE SHOP

The applicant proposes to add wine shop (on-premise) to the table of allowed uses. The current ordinance allows for wine shops (on-premise) in the CBD, HB (Highway Business), and Neighborhood Business (NB) zoning districts. The Alcoholic Beverage Control (ABC) Commission created a new allowance for a wine shop to have limited sales of on-premise consumption. Wine shops must comply with all ABC standards and obtain proper permits. Per NCGS 18B, wine shop permits authorize the retail sale of malt beverages, unfortified wine, and fortified wine in the manufacturer's original container and/or dispensed from a tap for consumption off the premises. The holder of the permit is allowed to sell unfortified wine for consumption on the premises, provided that the sale of wine for consumption on the premises does not exceed 40% of the establishment's total sale for any 30-day period. The limited consumption of on-premise wine would be subject to an audit by the ABC Commission. Wine shops (on-premise) are proposed to be permitted by right in MB.

BEER SHOP

The applicant would also like the ability to provide malt beverages on the premises in MB. Beer shops would need to obtain an on-premise malt beverage permit to allow for the retail sale of malt beverages for consumption on and off the premises. ABC regulations do not have the same limitations for a beer shop as a wine shop, and a beer shop would be allowed to offer malt beverages on the premises without any limitation or percentages to off-premise sales. The proposal is for beer shops to be permitted by right in MB. To reduce the impacts from the use on adjoining properties, restrictions were adopted in NB for any outdoor or indoor areas to be located three times the minimum setback yard from an adjacent property line or residential use. The applicant proposes to amend the standard to state any indoor or outdoor areas shall be located three times the minimum setback yard from any residential district.

The text amendment adopted in April 2023 consisted of defining both uses. Beer shops were defined as establishments substantially engaged in retail sale of malt beverages on and off premises subject to ABC Commission regulations. Wine shops were defined as establishments 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 this category, Neapolitan would be a change of use from retail to an eating and drinking establishment. This is important because the change of use would trigger a different parking standard. Parking for retail is calculated at 1 parking space per 200 square feet of retail space. Parking for eating and drinking establishments is calculated at 1 space per 110 square feet.

Neapolitan was issued a permit as a retail establishment in 2022. This is a grandfathered use, as the previous use of the property, The Checkered Church, operated as a retail establishment since the mid-1990s. Because this would be considered a change of use, the applicant is proposing to amend the parking calculation to specifically state that wine and beer shops are based on the retail parking calculation while also amending the use table to be consistent.

STAFF CONCERNS

Staff has met with the applicant on what sections of the ordinance would need to be amended to accomplish the goal of being able to have on-premise wine and beer at their location. Also, staff has discussed with the applicant the following concerns:

- Wine shops are treated differently by the State by limiting on-premise consumption, but beer shops do not have any limitations from ABC regulations or audits. The proposal is for wine and beer shops with on-premise consumption to be permitted by right. By expanding the allowance to other areas of Town, it may undermine bar regulations, as they need CZ and have larger setback standards from residential districts (200 feet).
- Wine shops by ABC regulations are treated as accessory to off-premise retail, but beer shops do not have any ABC regulations for on-premise consumption and the impacts of parking could be similar to that of bars.
- Currently if you are approved as a bar, you can be permitted to have mixed beverages, malt beverages, and wine on the premises. The allowance would expand the way the Town treats alcohol permits, with establishments being permitted by right for wine and beer. If an establishment would like to offer mixed beverages, then it would still need to be permitted as a bar.
- The Planning and Zoning Commission recommended denial of the text amendments as proposed.

LAND USE PLAN

The Land Use Plan does not specifically address wine and beer shops, but MB is classified as Marina Commercial/Industrial Mixed Use. The desired uses are water-based commercial, service, and light industrial uses, and sometimes water-related businesses (such as restaurants). These businesses rely on water access, so structures are purpose-built and traditional maritime activities are common.

Mr. Hardison presented the details.

ACTION: Motion to open the public 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

Paul Tully, who owns Neapolitan with his wife Erika, said the changes they are proposing are for MB only. He gave an overview of the business and highlighted reasons why the text amendment should be approved, focusing on ways he contends the request flows well with guidelines from the 2020 Land Use Plan.

Mr. Tully said they are asking for a text amendment rather than using the CZ process because a text amendment is how the issue was handled previously in other districts and Neapolitan is not proposing to become a bar or tavern, which is a more intensive use. He said MB is more business-focused than NB.

Mr. Tully also discussed parking, including practical perspectives and misconceptions. Mayor Barbee said the parking discussion is not relevant at this point because Neapolitan is already a retail use and the current parking requirement would not change if the text amendment is approved.

Mr. Tully said Neapolitan is currently permitted to do free tastings that consist of 1-ounce pours of wine and 2-ounce pours of beer. He said the proposed change would result in 5 ounces of wine being poured all at once instead of 5 different times and 12 ounces of beer being poured all at once instead of 6 different times. Mr. Tully said beer would only represent a small portion of operations, but beer sales are occurring all around Neapolitan and it would be unprecedented to be able to serve only wine and not beer also. He said wine without beer presents a practical business issue because sometimes wine drinkers come in with family and friends who do not drink wine.

Lynn Conto of 707 Magnolia Avenue, who is on the Commission, said she wanted to clarify a few things. She said when the Commission heard the NB request from The Veggie Wagon, it was clear that was the only property to which the text amendment could apply. Ms. Conto said when another Commissioner asked how many legitimate parking spots were on the Neapolitan site, Mr. Tully said none. She said the Commission's biggest concern was that the request opens up MB to anyone by right opening what is basically a bar, and this is not in the best interest of the Town.

Melissa Balbach of 106 Balbach Lane said no one should say this isn't in the best interest of the Town without asking residents, especially those who live nearby, what they want. She said there is a lot of support for the proposal, and it offers something good for the community.

No one else requested to speak.

ACTION: Motion to close the public 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

Mayor Barbee said there is no pretty, easy answer to this. He said he has no issue with approving a wine shop because of ABC oversight ensuring this will stay primarily a retail establishment, but he is struggling with approving a beer shop because that would mean by right anybody in MB can effectively open a beer bar without CZ. Mayor Barbee said he does not think this is Neapolitan's intention, but Council must protect the district as a whole.

Council Member Healy said he struggles with the fact that basically a line in the street divides MB from Putter Pub, where beer, wine, and liquor are served.

Mayor Barbee said perhaps the ABC Commission could be lobbied to create a definition for beer shops with regulations that can be enforced.

Mayor Pro Tem LeCompte said she thinks the Town needs to work with Neapolitan as best as possible, even if it means only approving a wine shop. She said she appreciates the applicants' preservation efforts, and one of the objectives when working on the Land Use Plan was to create more pedestrian- and bike-friendly businesses.

Council Member Benson asked if there is something creative that can be done to allow Neapolitan to move forward with wine and beer.

Council Member Hoffer said he doesn't have a problem with approving a beer shop because "business" is in the name of the MB zoning district.

Mr. Tully said there are not a lot of simple solutions for these issues, but he has concerns about Neapolitan being held to a different standard than another district that is more residential in nature.

ACTION: Motion that Council, whereas in accordance with the provisions of the North Carolina General Statutes, 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, Definitions to create standards 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 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

ITEMS OF BUSINESS

13. Proclamation to Recognize April 26, 2024, as National Arbor Day

A formal proclamation recognizing Arbor Day is a yearly requirement for a community to receive Tree City USA accreditation.

ACTION: Motion to approve Proclamation No. 24-2304 proclaiming April 26, 2024, as National Arbor Day

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

14. Discussion of an Encroachment Agreement for R09006-005-003-000

SeaWitch restaurant recently completed a survey of their property. It revealed an encroachment of their operation onto the Town's adjacent property, which has existed for many years and was unknown to the current owners and the Town until the survey was reviewed.

Moving forward, there should be an acknowledgment that this overlap exists to ensure the Town maintains ownership and that no safety or liability issues are created. The proposed encroachment agreement protects the Town and does allow the encroachment to remain but does not allow for any expansions. Under the agreement, if the encroachments are removed the encroached-upon property will revert to the Town and will no longer be able to be utilized by SeaWitch property owners.

Staff recommends adopting the proposed encroachment agreement.

Ms. Fox said if Council is in agreement with what is proposed, a motion should be made to allow the Town Manager to approve the encroachment agreement in a form suitable to the Town Attorney. She said there have been discussions with the requester's attorney, and there is some cleanup that needs to be done.

Mr. Parvin gave a brief overview and said the Town's property affected by the encroachment is a parking lot. Mr. Oakley said it's the back part of the SeaWitch stage that is encroaching.

Ms. Fox said the agreement would allow the encroachment to remain so long as it does not hinder the Town's use of its property.

Council Member Hoffer said the Town didn't even know about the encroachment until the SeaWitch owners reported it.

ACTION: Motion to authorize the Town Manager to enter into an encroachment agreement as discussed on R09006-005-003-000 in a form that is suitable to the Town Attorney

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

COUNCIL COMMENTS

Council Member Hoffer said he would like to discuss parking requirements in the Town code to see if they need to be updated. He also said the picnic shelter at the Lake will be painted on Monday, and anyone is invited to help.

Mayor Pro Tem LeCompte said Realtors Give Back Day is April 26, and they will be doing various projects around the Town. She said Town committee appointments are coming up in May and encouraged residents to apply.

Council Member Healy asked staff to remove the palm trees outside of the Council Chambers entrance.

Mayor Barbee said he would also like to revisit the minimum parking requirements in the Town code because they may be outdated.

CLOSED SESSION

15. Closed Session – Attorney/Client Privilege

ACTION: Motion to go into closed session to discuss an attorney/client matter; the matter being discussed is 23CVS003744 Carolina Beach Land Holdings vs. Town of Carolina Beach

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 called the meeting back to order and said Council took no action during closed session.

ADJOURNMENT

Mayor Barbee adjourned the meeting at 10:30 PM.