

# CAROLINA BEACH

Planning and Zoning Meeting

Thursday, May 13, 2021 - 6:30 PM

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



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## 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

Commissioner John Ittu

Commissioner Todd Piper (arrived at 6:42 PM)

### ABSENT

Commissioner Ethan Crouch

### ALSO PRESENT

Planning Director Jeremy Hardison

Senior Planner Miles Murphy

### APPROVAL OF MINUTES

1. Approval of the Minutes from April 8<sup>th</sup>, 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 Boswell, Commissioner Ittu

*Motion passed 5-0*

### STAFF REPORT ON RECENT COUNCIL MEETINGS

Town Council and Other Updates

- Through lots text amendment – TBD
- Rooming house – Council approved
- Budget
- Amusement rides

Mr. Murphy said the through lot amendment did not proceed with Council because Council Members did not see a substantial need for it and had some points of confusion. He said they didn't hate it, but

they didn't love it and therefore asked staff to do some more research and come back. Mr. Murphy said if there are any substantial changes to the proposed amendment, it will come back to the Commission before it goes to Council again.

Mr. Murphy said the rooming houses amendment was approved unanimously.

Mr. Murphy said the Town is in the middle of the budget process, and there were very few complaints about the proposed Planning Department budget at the budget retreat.

Mr. Murphy said the amusement rides are slowly starting to appear in the Boardwalk area. He said staff will be reviewing the site plan on Monday at the Technical Review Committee (TRC) meeting and will then have a better idea about what things will look like.

### **STAFF REPORT ON RECENT DEVELOPMENTS**

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

#### Permitting

- 68 permits (renovation, repair, grading, additions, fence)
- 10 residential new construction
- 3 certificates of occupancy

#### Code Enforcement

- 11 complaints received
- 10 resolved

#### Demos in Progress

- 210 Cape Fear Boulevard
- 305 Wilson Avenue
- 315 Hamlet Avenue (accessory building)
- 1213 Canal Drive
- 206 Carolina Beach Avenue South
- 1512 Bowfin Lane

#### Complete Demos

- 3 Boardwalk
- 617 Sumter Avenue
- 1310 Snapper Lane
- 1616 Mackerel Lane

#### New Businesses

- Optimum Vitality Acupuncture and Chinese Medicine – 8 North Lake Park Boulevard #106B
- Assertive Fitness – 8 North Lake Park Boulevard #108B

#### Coming Up

- Text amendment: table of permissible uses

- Text amendment: road improvements
- Text amendment: parking lots

## **PUBLIC DISCUSSION**

**ACTION:** Motion to open public discussion

Motion made by Chairman LeCompte, Seconded by Vice Chairman Rouse

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

*Motion passed 5-0*

No one requested to speak.

**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 Boswell, Commissioner Ittu

*Motion passed 5-0*

## **DISCUSSION ITEMS**

2. Consider a Text Amendment to Chapter 36 Subdivisions and Chapter 40 Zoning to comply with State Statute 160D updates

Due to recent updates at the State level, all counties and municipalities are required to overhaul various elements of their ordinances to comply with new State standards. The transition to the new standards in 160D did not make too many changes that will be noticed daily, but many of them are important required elements for building and zoning procedures. Staff also took the opportunity to streamline some elements of the ordinance that were previously confusing, were out of order, or had other flaws. Town Attorney Noel Fox completed her initial review, and staff has made her requested changes in preparation for Commission review.

Mr. Murphy presented the details.

### Background

- Consolidates Chapters 153A and 160A into one unified chapter
- Must be adopted by all cities and counties by July 1, 2021 (pushed back due to COVID-19)
- Primarily affects minimum housing, subdivisions, and zoning ordinances

### Local Ordinance Implications

- No more Conditional Use Permits or Conditional Use Districts
- Changes to notification requirements
- Updated Special Use Permit procedures to Conditional Zoning
- Conflict of interest statements
- Requires a Comprehensive or Land Use Plan

Chairman LeCompte said her understanding is that Ms. Fox has been through this and is good with

every change that was made. Mr. Murphy said Ms. Fox has seen everything that was in the packet and then some.

Vice Chairman Rouse asked Mr. Murphy to give a quick synopsis of 160D. Mr. Murphy said largely it's going to be relatively unnoticed to the public, and the way the Planning Department functions does not change. He said except for the shift from the quasi-judicial process of a Conditional Use Permit to the legislative process of Conditional Zoning, there really will be no noticeable changes on a daily basis.

**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 Piper

*Motion passed 6-0*

No one requested to speak.

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

Motion made by Chairman LeCompte, Seconded by Vice Chairman Rouse

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

*Motion passed 6-0*

**ACTION:** Motion that the Commission, whereas in accordance with the provisions of North Carolina General Statute 160A-383, does hereby find and determine that the adoption of the text amendment to amend Chapter 36 and 40 to update the ordinance to reflect 160D State statute changes 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 Boswell

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

*Motion passed 6-0*

3. A discussion regarding potential changes to Chapter 40, Article VII, Fence Regulations to review restrictions and how to measure height.

The Commission requested that staff review fence regulations, particularly related to how height is measured. Staff presented a range of options related to setbacks from retaining walls, maximum height, front yard setbacks, and measurement.

Planner Gloria Abbotts presented the details.

Maximum Height: 7 feet in rear and side yards

Building code requirements

- Building permit fee increased for fences over 6 feet
- 3 inspections required – footing, rough frame, final
- Engineering

Height – Front Yard Setback: No fence shall exceed 4 feet in height when located in the front yard setback

Proposed changes (options)

- No fence shall exceed 4 feet in height within 10 feet of the front property line
- No fence shall exceed 4 feet in height within 15 feet of the front property line
- No fence shall exceed 4 feet in height within 20 feet of the front property line

Retaining Walls – any retaining wall or berm below the fence shall be considered as part of the overall height of the fence (maximum height of 7 feet cumulatively)

Proposed changes (options)

When the overall fence height including the retaining wall would be greater than 7 feet,

- a. For every foot in height of retaining wall, the fence must be setback the same height from the property line
- b. The fence must be setback 5 feet from the property line

Commissioner Hogan asked for clarification about a picture on one of the slides. Ms. Abbotts said if a property owner wanted to have the full 7-foot height, they would have to have that setback from the retaining wall.

Commissioner Piper asked where it is proposed to measure the retaining wall. Ms. Abbotts said from the outside. Commissioner Piper asked if it's from the highest or lowest point. Ms. Abbotts said it would be to the highest point of the fence.

Commissioner Piper brought up a scenario in which the size of a retaining wall varies across a property. Mr. Murphy said more than likely that would be treated the same as the measurement of a fence; as the grade changes, the height of the fence may change as well because it's supposed to move with the land. Commissioner Piper said he would suggest measuring the retaining wall at the highest point. Mr. Murphy said that could be put into action.

Commissioner Hogan said this is probably the most fair, clear, and concise method.

Commissioner Piper said the retaining wall is almost an enhancer to the problem of stormwater. He said to get water to run to the front of a property, the back has to be higher, so builders are putting in retaining walls and the land that abuts it isn't necessarily level. Commissioner Piper said his concern is what it will look like in 10 years if the Town does allow these taller fences because there will be many more lots built. He said a bigger concern is when property owners start tearing down older houses, everyone is going to want to raise their land, which is not fair to neighbors.

Mr. Hardison referred to the aforementioned options a and b. He said this is just a discussion item to help staff come up with language to bring back for the next meeting, but he said the Commission could also make a motion now to forward to Council.

Chairman LeCompte said she doesn't think the front should be over 4 feet. Commissioner Piper said he agreed.

Commissioner Boswell asked if staff discussed fences on top of retaining walls. Mr. Hardison said the retaining wall would count as part of the fence height.

Vice Chairman Rouse asked if a retaining wall is already engineered. Mr. Murphy said it depends on the zone. He said small retaining walls may not require engineering, but if required by the building code a retaining wall would have to be engineered. Mr. Hardison said if the fence panel itself is over 6 feet, then that would become engineered for wind load.

Mr. Murphy said that measurement is already in the ordinance, and the Town is not looking to change anything from the status quo when it comes to a retaining wall with a fence on top. He said the intent is to establish how far back a fence should be from a retaining wall so it doesn't look like a wall but would give the property owner the ability to have a full-height fence.

Vice Chairman Rouse said he likes the one-for-one setback (option a) and thinks that's fair. Commissioner Piper said he also liked that option with a minimum of 2 feet. Chairman LeCompte said she thinks there needs to be a minimum. Commissioner Piper said his concern is someone would put a 1-foot retaining wall and then put a 7-foot fence behind it, therefore making it look like an 8-foot wall. Vice Chairman Rouse said he would be OK with that minimum stipulation.

Commissioner Boswell asked if a neighboring smaller property wanted a fence if there would be a requirement for how far it has to be from the retaining wall. Mr. Murphy said a retaining wall is generally done directly adjacent to the property line of the property required to install it just inside of it, so in theory the neighbor would be allowed to put a fence right up against the retaining wall on their side. Mr. Hardison said this is because that property would not own the retaining wall.

Chairman LeCompte said she likes the one-for-one option but would like to see a minimum, as Commissioner Piper suggested.

Commissioner Hogan said he wants at least a 2-foot minimum.

Vice Chairman Rouse said he is good with that.

Commissioner Piper said he is good with one-for-one and a 2-foot minimum.

Mr. Murphy requested clarification on the Commission's direction. He asked if there is a 1-foot retaining wall whether the desire is for a 2-foot or 1-foot minimum. Chairman LeCompte said 2 feet. Mr. Murphy said his understanding was with a 2-foot retaining wall the Commission wants a 2-foot minimum, and 3 feet is when an additional one-for-one would be added. The consensus of the

Commission was yes.

Mr. Hardison asked the Commission for thoughts about fence height related to the front yard setback. He said for the majority of residential properties, the setback is 20 feet, which means they can only put a 4-foot fence on the first 20 feet of the property. He said the setback is 25 feet in R-2 and R-3, but the Commission can make the setback uniform for all residential properties if desired.

Mr. Murphy said this item is coming up as a result of staff experience with the desire of property owners and running into a lot of fences without permits in non-conforming situations where the fence is situated further forward than would currently be allowed, especially with older homes. He said he doesn't know exactly how many homes it affects, but it does come up more than most would expect.

Vice Chairman Rouse asked what staff recommends. Ms. Abbotts said there was discussion at the TRC of a 10-foot setback for more flexibility. Mr. Murphy said staff doesn't have a substantial opinion either way. He said staff will enforce whatever the community feels is appropriate. Mr. Hardison said the issue has more to do with community value and aesthetics.

Vice Chairman Rouse said except for rare cases, he thinks within 10 feet of the property line having a fence height over 4 feet would not look good.

Commissioner Piper said he doesn't think the way it is right now can be changed, but he thinks the Town should make a rule or exception for older homes. He said he thinks this would be fair while keeping future new homes consistent with most existing homes. He said if the fence came all the way up, he thinks it would look too much like a fortress.

Mr. Murphy said staff could look into what Commissioner Piper proposed, or based on comments he would direct the Commission to the third option, which states "no fence shall exceed 4 feet in height within 20 feet of the front property line," therefore treating every district the same.

Commissioner Piper said he would like to keep the 25-foot setback in places that currently have it, such as R-3. He said he doesn't want to see new homes look different from those that have been up for years and followed the current rules.

Mr. Murphy said the Town does not have to touch this item or change anything at all if the Commission wishes. Mr. Hardison said the Town can keep the language there but have a caveat for non-conforming homes so they can have a privacy fence in line with the front of their home but not extend it past that point.

Commissioner Hogan said a lot of those older cottages are close together, so it would be nice to have a privacy fence down the side.

Commissioner Piper said he likes the grandfathering idea but doesn't like the idea of moving the

existing setback.

Mr. Hardison moved on to the issue of overall maximum fence height.

Vice Chairman Rouse asked what the cost of a building permit for a fence is. Mr. Murphy said he thinks the minimum inspection fee is \$150 to \$200, and the Building Inspector measures per square feet what he inspects. He said it could be 60 cents per square foot per length of the fence. He said the Town would probably see a lot of potential violations because some property owners would apply for 6 feet and try to skirt around ways to make the fence slightly taller. He said it could create a lot of conflicts very quickly, but staff is prepared to deal with that, although it creates a unique scenario that hasn't been dealt with much before.

Vice Chairman Rouse said he is personally in agreement with requiring an increased building permit fee, three inspections, and engineering for fences over 6 feet. He said he doesn't think any of these things are unreasonable.

Chairman LeCompte said she agreed.

Commissioner Ittu said he thinks it's very reasonable. He said once a property owner gets beyond 6-foot panels, it would become a custom fence with a lot of additional expense.

Commissioner Hogan said people may get excited about the possibility of going over 6 feet but change their minds when they realize the cost.

Vice Chairman Rouse said it sounds like everyone is in agreement on this portion of the proposed regulations.

Mr. Hardison said if there is anything missing from the discussion, staff can add it to the proposed regulations and bring the item back before the Commission.

Commissioner Hogan said he appreciates all the work staff has put into this and gave thanks for the effort.

Vice Chairman Rouse asked if it's accurate to say that a property owner can put decorative lattice on top of a 6-foot fence. Mr. Murphy said no, latticework or any other material on top of or below the fence would count. Mr. Hardison said there is a section that addresses trellises and lattices in the current ordinance.

Mr. Murphy said he is grateful for the Commission's faith in staff. He said staff would bring back the item next month provided nothing chaotic happens between now and then. He said he was grateful for the discussion and that this is how we keep the Town a positive, growing community.



Commissioner Piper asked who did the graphics for the presentation. Ms. Abbotts said she did most of them, but Mr. Hardison contributed to the portion about retaining walls. Commissioner Piper said he was impressed and that it would be impossible to try to explain the issues without graphics.

Chairman LeCompte mentioned Mr. Hardison's creativity with the graphics that went with the rooming house presentation. Vice Chairman Rouse said he noticed there were no cars at the house that prompted the recent rooming house ordinance changes. Mr. Hardison said after Council passed the changes, he spoke with the property owner the next day. He said it looked like there had been no activity since then. Chairman LeCompte said she heard the house was for sale. Mr. Hardison said it was for sale, but the owner took it off the market and had more tenants living there after that. Vice Chairman Rouse asked Mr. Hardison if he had talked to the neighbors on the street directly north of the property. Chairman LeCompte said one of the residents of that area appeared before Council on Tuesday night to talk about issues with the rooming house. Vice Chairman Rouse said those neighbors would be happy to keep staff informed about what's going on there. Mr. Hardison said he talked to six or seven neighbors in the vicinity.

Commissioner Boswell asked about the status of the parking lots issue. Mr. Hardison said Council decided to table the matter because Council Members wanted a better understanding of the issue and clarification on what that means for private lots with which the Town has partnerships. Commissioner Boswell said she has seen houses next to empty lots charging for parking on weekends. Mr. Murphy said this is not allowed outside of the Central Business District without an approved application for a temporary parking lot. Mr. Hardison said Code Enforcement has been out to check for this periodically. Commissioner Boswell said she had never seen it here before. Mr. Hardison said he hasn't seen it much here, but it's interesting that it's starting to happen. He said Code Enforcement can keep an eye on this.

Vice Chairman Rouse asked if the Town has changed parking vendors. Mr. Hardison said no. He said the Town released a request for proposals but has not made a decision on whether to change. He said he thinks the contract is up this year. Vice Chairman Rouse said the Town recently sent a cure letter to the current vendor to get some issues resolved. He said he assumes the Town is ready to change vendors if improvements weren't made, but he has not yet followed up. Mr. Hardison said a few parking companies have responded to the request for proposals, and it's a Council decision at this point.

Chairman LeCompte asked if staff was finished with the fence discussion. Mr. Hardison said yes. He said staff will bring back in ordinance form what was discussed and give the Commission one last look to see if things are ready to move forward.

#### **NON-AGENDA ITEMS**

Vice Chairman Rouse said there was a big land clearing happening in the 600 block of Raleigh Avenue and through to Monroe Avenue. He said it's a pretty sizable small project. Mr. Hardison said seven new homes are going up. Vice Chairman Rouse said the lots went into the Multiple Listing Service (MLS) today, but all are already under contract.

Mr. Hardison said Council will be appointing for committees in June. He said Commissioner Boswell's term is ending, and he asked her to let Town Clerk Kim Ward know if she is interested in being reappointed. Commissioner Boswell said she didn't realize her term was ending this year.

**ADJOURNMENT**

**ACTION:** Motion to adjourn

Motion made by Chairman LeCompte, Seconded by Commissioner Hogan

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

*Motion passed 6-0*

The meeting adjourned at 7:30 PM.