

CAROLINA BEACH

Board of Adjustment Meeting

Wednesday, September 18, 2024 – 6:00 PM

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



AGENDA

CALL TO ORDER

APPROVAL OF MINUTES

- [1.](#) April 22, 2024 – BOA Minutes

PUBLIC HEARING

- [2.](#) Appeal of Chapter 34 – Streets, Sidewalks and Rights-of-Way, Article III. Obstructions.
Applicant: Ant Bates Motel, LLC
- [3.](#) Variance to Chapter 40. Article VII. Fence Regulations from the required 4’ height limitation for fences located within the 20’ front yard setback for 201 Fayetteville Ave. Applicant: Dry Dock Inn

DISCUSSION ITEMS

- [4.](#) Appoint a Chair and Co-chair of the Board of Adjustment

NON-AGENDA ITEMS

ADJOURNMENT



AGENDA ITEM COVERSHEET

PREPARED BY: Gloria Abbotts, Senior Planner

DEPARTMENT: Community
Development

MEETING: Board of Adjustment – September 18, 2024

SUBJECT: April 22, 2024 – BOA Minutes

Action:

Approve the April 22, 2024 minutes

CAROLINA BEACH

Board of Adjustment Meeting

Monday, April 22, 2024 - 6:00 PM

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



MINUTES

CALL TO ORDER

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

PRESENT

- Chairman Wayne Hartsell
- Board Member Jullena Shelley
- Board Member Ken Thompson
- Board Member Tim Howard

ABSENT

- Vice Chairman Patrick Boykin
- Board Member Paul Levy

ALSO PRESENT

- Planning Director Jeremy Hardison
- Senior Planner Gloria Abbotts
- Planner Haley Moccia

APPROVAL OF MINUTES

1. January 22, 2024 – Board of Adjustment Minutes

ACTION: Motion to approve the minutes

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

Voting Yea: Chairman Hartsell, Board Member Shelley, Board Member Thompson, Board Member Howard

Motion passed 4-0

PUBLIC HEARING

2. Variance to Building Setbacks – Section 40-74 Dimensional Standards for Lots and Principal Structures

The applicant is Chiaki Ito, the property owner of 307 Florida Avenue. The subject property is located on the northern end of the peninsula that juts out from Canal Drive. The parcel is in the R-1B zoning district, which supports single-family and allows a density of 8.7 units per acre. The property consists of 0.24 acres from the high-water line, which makes this a large enough lot to allow up to 2 living units on the property.

The property is a sound-side-facing property and is bordered by single-family homes. The property has a main single-family house and a detached garage with a single-family unit. The main house was built in 1947, before flood maps and zoning setbacks were established. Because of this, it was built encroaching into the right-side setback. The front of the house currently meets the 20-foot front setback requirements, but the current front staircase encroaches 4 feet into the front setback. The termination of a staircase (the last two steps) is the only part of a staircase that the ordinance allows to encroach into a building setback. The ordinance allows the last 2.5 feet of the end of a staircase to encroach over the setback line, but this does not include any stair landings or any other part of the staircase column except the bottom termination.

The Town applied for a Federal Emergency Management Agency (FEMA) Flood Mitigation Assistance grant on the property owner's behalf. The grant funds are for the raising of houses to bring them into flood compliance to meet the current flood elevation requirements established by the 2018 Flood Insurance Rate Map (FIRM). The Town was awarded the grant, and Ms. Ito's house was among 6 others on the island approved by the grant to be elevated to meet base flood elevation (BFE). Houses accepted into the grant program are evaluated by an engineer, and the engineer determines if the house is structurally strong enough to be lifted. The engineer determined the house could be lifted but confirmed the house could not be moved back from the front property line because the structure was located too close to the detached garage for it to be safe to move.

When houses are raised, they require new staircase access. Due to the house's close proximity to the front building setback line, any new access added to the front of the building would encroach into the front setback. Many different designs were proposed by the engineer and Town staff, but none were able to meet the Town setback ordinance requirements. A front staircase access to the existing front door is required by N.C. Building Code, which is why Ms. Ito is seeking a variance to allow the new staircase to encroach into the front setback. Without the variance, the house will not be able to be lifted and it would continue to pose potential flood damage risks to itself and surrounding properties.

Ms. Ito is seeking a variance to allow a front staircase and staircase landing encroachment into the 20-foot front building setback. The variance would allow a new staircase landing and staircase column to encroach into the front setback up to 1 foot and 10 inches or have a front setback of 18 feet and 2 inches.

Individuals planning to speak on the matter were sworn in.

Ms. Moccia presented the details. She said approvals for variances require a 4/5 majority to pass, and because there are only 4 Board Members present tonight each finding of fact would have to pass unanimously for the variance to be granted. Ms. Moccia also reviewed the house's background, reasons for the variance request, and four required findings that must be met for approval:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting

from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved.

Ms. Ito said she has owned the house since 1998. She said they have done everything possible to figure out how to move the house to fall into the setback, but there is not a lot of space to consider.

No one else requested to speak.

Chairman Hartsell summarized the request, and Board Members went through each required finding for the variance request.

Regarding finding 1, the following agreed: Chairman Hartsell, Board Member Thompson, Board Member Shelley, and Board Member Howard. Therefore, finding 1 passed 4-0.

Regarding finding 2, the following agreed: Chairman Hartsell, Board Member Thompson, Board Member Shelley, and Board Member Howard. Therefore, finding 2 passed 4-0.

Regarding finding 3, the following agreed: Chairman Hartsell, Board Member Thompson, Board Member Shelley, and Board Member Howard. Therefore, finding 3 passed 4-0.

Regarding finding 4, the following agreed: Chairman Hartsell, Board Member Thompson, Board Member Shelley, and Board Member Howard. Therefore, finding 4 passed 4-0.

ACTION: Motion to approve

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

Voting Yea: Chairman Hartsell, Board Member Shelley, Board Member Thompson, Board Member Howard

Motion passed 4-0

NON-AGENDA ITEMS

Mr. Hardison said there are a couple of pending appeal applications, so there will be meetings in May and June and dates will be confirmed based on Board Member availability.

Mr. Hardison also said Board Member Howard is stepping down, which creates an opening on the Board. He said Council will appoint a new member at tomorrow's workshop. Mr. Hardison said one alternate remains following Board Member Howard's departure. Chairman Hartsell thanked Board Member Howard for serving.

ADJOURNMENT

ACTION: Motion to adjourn

Motion made by Board Member Thompson

Voting Yea: Chairman Hartsell, Board Member Shelley, Board Member Thompson, Board Member Howard

Motion passed 4-0

The meeting adjourned at 6:22 PM.



AGENDA ITEM COVERSHEET

PREPARED BY: Gloria Abbotts, Sr Planner **DEPARTMENT:** Community Development

MEETING: Board of Adjustment – September 18, 2024

SUBJECT: Appeal of Chapter 34 – Streets, Sidewalks and Rights-of-Way, Article III.
Obstructions

Applicant: Ant Bates Motel, LLC

BACKGROUND:

The applicant, Ant Bates Motel, LLC (owner of Silver Dollar), has filed for an appeal of Chapter 34, Sections 61-71.

The town adopted regulations for sidewalk cafes in April of 2006. The town set up a permitting process for sidewalk cafes at the request of a local business owner. The existing allowable encroachment area has created a balance between business interests and pedestrian safety since the adoption of the ordinance.

In November 2023, the Town Council approved an amendment to the sidewalk café ordinances. The council had concerns related to the size and extent of encroachments, barriers, purpose, indemnification, and overall consistency of the encroachments across the boardwalk area. Staff met with the Pleasure Island Chamber of Commerce and the 13 boardwalk business owners to discuss changes prior to adoption of the new ordinance. (Attachment 2)

Upon the adoption of the new sidewalk café ordinance, Silver Dollar built a barrier without permits. The encroachment area extends onto the boardwalk 6'4". The Silver Dollar was sent a violation letter on December 20, 2023. The barrier that was installed for the business' sidewalk café was in violation of the following. (Attachment 3)

1. The base shall be flat footed and squared, no more than ½" in height.
2. The barrier shall be detached from the building.
3. There shall be a minimum of 2 but no more than 3 horizontal rigid connections on each barrier.
4. The bar tops attached to the windows shall be removable, not a permanent encroachment.
5. The sidewalk measures 20'. The barrier shall not extend more than 5' from the building.

In January 2024, the Silver Dollar applied for their annual sidewalk café application. The site plan submitted showed the sidewalk café area encroaching 6' on the boardwalk (Attachment 4)

On March 13, 2024, the applicant was sent a violation letter. They had fixed the base of the barrier but the additional items from December 2023 had not been fixed. (Attachment 5)

In March 2024, the applicant petitioned the Town to amend the sidewalk café encroachment allowances. The applicant proposed that sidewalk café encroachments should be allowed to encroach 1/3rd of the sidewalk width. The existing ordinance allows for 1/4th of the sidewalk width for encroachments. Staff did not recommend approval of the text amendment as proposed. Based on TRC comments, the larger encroachment would reduce the walkable area in an already congested area of the boardwalk during the peak season. The 1/3rd encroachment would prevent the town from providing the 2' buffer in between the pedestrian walkway for trash cans, benches, plantings, and other amenities on either side of the right-of-way. The text amendment was denied by the Town Council 4-1. Council members cited concerns regarding safety due to increased pedestrian foot traffic in the area during the summer season.

The applicant has appealed staff's interpretation of the ordinance in order to remedy the aforementioned violations.

ACTION REQUESTED:

The board of adjustment shall hear and decide appeals of decisions of administrative officials charged with enforcement of the zoning ordinance.

The board can agree or deny staff interpretation of the ordinance Chapter 34, Sections 61-71.

Attachments:

1. Appeal application
2. Sidewalk Café Ordinance
3. Violation letter, Dec 2023
4. Sidewalk Café Site Plan
5. Violation letter, March 2024
6. Photos



Application for Appeal
TOWN OF CAROLINA BEACH, N.C.

Permit Number: N/A

Each application must be printed or typewritten and have all information answered. **It is strongly recommended that the applicant set up a meeting with Planning Staff prior to the submission deadline to ensure the application is complete.** The Town of Carolina Beach requires a licensed attorney to appear in a representative capacity to advocate the legal position of another person, firm, or corporation who is the applicant/owner of record.

Fee: to be submitted with application in accordance with the Town's annually adopted Rates and Fee Schedule

This petition will be scheduled for the next possible regular Board of Adjustment meeting. Meetings are scheduled for the third Monday of the month. The applicant or a representative should be present at the meeting to answer any questions the Board may have. Board of Adjustment meetings are held on the second (3rd) Monday of each month at 6:00 P.M. in the Council Room at the Municipal Administration Building, 1121 N. Lake Park Boulevard, Carolina Beach, NC 28428. Applicants will be informed of any changes in date, time, or location of meetings. Applications and supplementary time for processing and postings are required by the General Statutes of North Carolina. **Application Deadline: 25 days prior to next scheduled meeting.**

Applicant

Name: Ant Bates Motel LLC (c/o Rebecca Knudson and Max Shafer, Cranfill Sumner)

Applicant Mailing Address:

124 E. Main Street, Benson, North Carolina 27405

Street Address City State Zip

Applicant Phone Number: mobile/work/home (circle one): 9107776064 mobile/work/home (circle one): 9107776021

Applicant Email Address:

rknudson@cshlaw.com

Property Owner Name: Ant Bates Motel LLC (hereinafter "Ant Bates")

Property Owner Mailing Address:

124 E. Main Street, Benson, North Carolina 27405

Street Address City State Zip

Section(s) of ordinance being appealed:

Chapter 34, Section 61-Section 71. Ant Bates appeals both the violation and the ordinance. Further details of the

Ordinance sections which Ant Bates believes merit appeal will be detailed in forthcoming supplemental briefs and/or exhibits.

Please give a brief description of the interpretation:

Information obtained from experts indicates that application of the statute per the Notice would be premature. Enforcement could result in a variety of harms to Silver Dollar and the community.

It has come to our attention that the ordinance and the alleged violations are arbitrary and capricious, prime for selective enforcement, require unreasonable compliance

timelines, potentially a mechanism for a wrongful taking of property, potentially violative of due process rights through enforcement mechanisms, out of line with stated

purposes, uses vague/ambiguous key terms, is not ripe for enforcement, unintelligible as to geographic coverage, and inappropriately uses exemplar diagrams as prescriptions.

Applicant Signature:

[Handwritten Signature] Attorney for Ant Bates Motel, LLC

Date: 04 / 12 / 2024

Applicant Printed Name:

Ant Bates Motel, LLC

SHANNON ROACH
LEGAL ASSISTANT
DIRECT DIAL #: (910) 777-6045
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5535 CURRITUCK DR., SUITE 210 (28403)
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FAX (910) 777-6111



April 25, 2024

VIA US MAIL

Jeremy Hardison
Town of Carolina Beach
1121 N. Lake Park Blvd.
Carolina Beach, NC 28428

Re: Notice of Violation – Appeal Fee
Our Client: Ant Bates Motel LLC/Silver Dollar
CSH File No.: 12711.0000001

Dear Jeremy,

Please find enclosed, check number 20458 in the amount of \$500.00 for the Appeal Fee on behalf of Ant Bates Motel LLC/Silver Dollar. The *Appeal of Notice of Violation* was sent to your attention on Friday, April 12, 2024. We understand that the appeal hearing is tentatively set for Monday May 20th at 6 p.m. Please let us know if there are any changes to this meeting date and time.

If you have any questions or need any additional information please do not hesitate to reach out to our office.

Very Truly Yours,

Shannon W. Roach

Shannon W. Roach
Legal Assistant to Rebecca A. Knudson

Enclosure

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AN ORDINANCE TO AMEND CHAPTER 34 ARTICLE III. OBSTRUCTIONS AND THE TOWN RATES AND FEE SCHEDULE

ARTICLE III. OBSTRUCTIONS

Sec. 34-61. Assembly on streets or sidewalks.

All persons assembling and loitering upon the streets or sidewalks of the town in sufficient number or in such a manner as to be an obstruction to the streets and sidewalks or crossings, or an annoyance to persons engaged in business enterprises, shall disperse when ordered to by any police officer.

(Code 1977, § 6-2001; Code 1986, § 15-36; Ord. No. 80-08, § 6-2001, 3-11-1980)

State law reference(s)—Failure to disperse when commanded, G.S. 14-288.5.

Sec. 34-62. Purpose, goals, and applicability.

- (a) *Purpose.* The regulations in this article are designed to create an active, accessible, and vibrant urban and mixed use environment. In doing so, it also recognizes the inherent relationship between the vitality of private property and the increased economic and pedestrian activities of the street. The public right of way houses many transportation activities, including walking, bicycling, transit, freight movement and automobile travel. It harbors the hardware, such as traffic signals and street lights, which supports those activities. The right-of-way also contains utilities. Each of these functions has specific design needs and constraints. The variety of functions is administered by people in several agencies, both inside and outside the town. The pedestrian environment should be a place where public activities are encouraged. [Temporary](#) Commercial activities such as dining, displaying merchandise, and advertising may be permitted when they do not interfere with safety and accessibility.
- (b) *Goals.* The goals of this article are:
 - (1) To apply fair and equitable regulations in granting the privilege of using commercial public spaces for private use.

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- (2) To assure a safe and comfortable street-level environment.
 - (3) To promote economic and pedestrian activities in commercial zoning districts.
 - (4) To establish maintenance standards and responsibilities when public space is used for private purposes.
 - (5) To enhance the appearance and design of streets, sidewalks and other public spaces.
 - (6) To provide a one-stop shop for obtaining permits for use of public rights-of-way spaces.
 - (7) To encourage diverse street-level activity.
 - (8) To make it convenient to do business in public spaces.
 - (9) To continue to encourage and promote public activities in rights-of-way while allowing for commercial activities only when they do not interfere with safety and accessibility.
- (c) *Applicability.* Except as hereinafter provided, it shall be unlawful for any person to obstruct entirely or in part any sidewalk, street, or other public way within the jurisdictional limits of the town by the selling or offering for sale at auction or otherwise any goods, wares or merchandise thereon, or to use any sidewalk, street, or otherwise any goods, wares or merchandise thereon, or to use any sidewalk, street or other public right-of-way for the placing thereon of any materials or substance, except where expressly permitted by the provisions of this Code or other ordinance of the town, or to use any sidewalk, street or other public right-of-way for the display or placing of merchandise or any other goods or commodity thereon.

(Ord. No. 16-1030 , 10-11-2016)

Sec. 34-63. Maintenance liability.

Any private party receiving a permit for use of public space assumes responsibility for maintaining the spaces used by that activity. Areas must be kept clean and free of obstructions that impede pedestrian movement. The permit holder is liable for all damages and repairs to the streetscape, trees and vegetation, sidewalks, streets, or other public amenities that directly relate to the use of the permitted space. The permit holder is also responsible for the temporary removal of private materials or accessories from the permitted space for specific maintenance services deemed necessary by the responsible town department, division, or agency.

Sec. 34-64. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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Boardwalk means rights-of-way east of Woody Hewett/Canal, and from the north side of Harper Avenue up to and including Cape Fear Boulevard. All boardwalks operate as pedestrian walkways.

Buffer zone means an area on a sidewalk or boardwalk typically having obstructions that may prevent accessibility (i.e., planters on boardwalks or car overhangs on sidewalks).

Canopy means a fixed, permanent, or retractable ~~fabric cover~~ obstruction that is attached to the wall of a building and that projects over an entrance or window into public space.

Eating and/or drinking establishments. These establishments are defined in chapter 40, zoning.

Encroachment means the use, placement, or extension of private uses into, upon, over, or under public space or publicly-owned property.

~~*Established businesses* means businesses housed within a building or a permanent immobile structure, with frontage on the public right-of-way.~~

Establishment operator means the person, firm, or corporation operating a business with an encroachment.

Merchandise means items offered for retail sales including, but not limited, to plants, flowers, clothing, jewelry, ornaments, art work, food or beverages, or other goods or wares.

Obstruction. Anything located in public space ~~that inhibits accessibility.~~

Oceanfront Boardwalk means the easternmost right-of-way area that is adjacent to the town's boardwalk.

Public space means an interest in land to the town which provides for the perpetual right and privilege of the town, its agents, franchise holders, successors, and assigns to construct, install, improve, reconstruct, remove, replace, inspect, repair, maintain, and use a public street, including related and customary uses of street rights-of-way such as sidewalks, bike paths, landscaping, mass transit facilities, traffic control devices and signage, sanitary sewer, stormwater drainage, water supply, cable television, electric power, gas, and telephone transmission and related purposes in, upon, over, below, and across the rights-of-way. The town is authorized to remove, and keep removed from the rights-of-way all trees, vegetation, and other obstructions as is determined to be necessary by the town to maintain, repair, and protect facilities located in the realm.

Sidewalk means a public area that accommodates pedestrian travel and is adjacent to a street designed for vehicular travel.

Sidewalk café means ~~an encroachment located in public space~~ a portion of a public sidewalk, pedestrian walkway, or public right-of-way used as an extension of an eating or drinking establishment to which it is adjacent.

Street means a paved area of the vehicular roadway measured.

(Ord. No. 16-1030 , 10-11-2016; Ord. No. 18-1083, 4-10-2018)

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Sec. 34-65. Permitting requirements.

- (a) *Application.* Any business establishment desiring to obtain a revocable encroachment permit shall prepare and file an application with the Town Manager or his designee which shall contain the following information:
- (1) The name, address, and telephone number of the business desiring the revocable encroachment permit.
 - (2) The name, address, and telephone number of the business operator.
 - (3) A list of proposed encroachments to include the type of food, beverage, or food product to be sold and served, list of any activities/games planned, and any merchandise or sign displays.
 - (4) The hours of operation of the establishment and the proposed hours of operation of the encroachment areas.
 - (5) A drawing or site plan showing the section of right-of-way to be used for the proposed activities, and the section to be kept clear for pedestrian use. All existing obstructions and site triangles shall be labeled and taken into consideration when reviewing applications.
 - (6) Evidence of adequate insurance or other forms of security to hold the town and its taxpayers harmless from claims arising out of the operation of the sidewalk cafe, as determined by the Town Manager ~~in consultation with the town's insurance carrier.~~
 - (7) An indemnity statement, approved by the town attorney, whereby the establishment operator agrees to indemnify and hold harmless the town and its officers, agents, and employees from any claim arising from the operation of the areas encroaching in the right-of-way. The establishment operator shall be responsible for any damages associated with an encroachment.
 - (8) A copy of all permits and licenses issued by the state or the town, including health and ABC permits and business licenses, necessary for the operation of the business, or a copy of the application for the permit if no permit has been issued. This requirement includes any permits or certificates issued by the town for exterior alterations or improvements to the establishment.
 - (9) A sworn statement describing any violation by the establishment operator of any laws, regulations, or ordinances relating to the possession, sale, consumption, or transportation of intoxicating beverages or controlled substances during the five years immediately preceding the date of the permit application.
 - (10) Such additional information as may be requested by the Town Manager or his designee to determine compliance with this section.
 - (11) A fee shall be established in the annually adopted rates and fees schedule to cover the cost of processing and investigating the application and issuing the permit.

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- (b) *Issuance of a permit.* Town staff will evaluate any private revocable encroachment proposed to go on either town right-of-way or town property. No revocable encroachment permit may be issued unless the application is complete and unless the following requirements are met:
- (1) The proposed encroachment activities must be directly associated with an adjacent use, and the same expansion would be approved for the business if it was all proposed on private property.
 - (2) The encroachment shall be under the same management and share the same food preparation facilities, restroom facilities, and other customer convenience facilities as the establishment.
 - (3) The area of encroachment must be operated under the same name as the adjacent established business and may not be open or operated at any time when the adjacent established business is not open for business.
 - (4) All encroachments designed for patron use shall meet all ADA requirements.
 - (5) The establishment seeking to obtain an encroachment permit shall front on and provide ADA compliant access from the business to the encroachment area.
 - (6) The site plan shall be reviewed to ensure no conflicts exist with public safety or infrastructure in the right-of-way (i.e., vision clearance, fire hydrants, stormwater, etc.).
- (c) *Term, transfer, renewal, etc.* Permits issued in accordance with the provisions of this section shall:
- (1) Be issued for the period beginning January 1 and expiring December 31 of each year.
 - (2) Not be transferable or assignable.
 - (3) Annual fees shall be established in the town fee schedule.

(Ord. No. 16-1030 , 10-11-2016)

Sec. 34-66. Operation.

- (a) For all buildings immediately adjacent to an encroachment a clear path of travel must be maintained from any building exit, equal in width to the exit door. This path of travel must be free of obstructions for the entire length of the encroachment.
- (b) Encroachments shall not involve permanent alterations to public space. Any ~~tables, chairs, barricades, stanchions, platforms, or other~~ obstructions used in the encroachment area shall be of a type that is easily removed from the public right-of-way. Encroachments shall be removed within 24 hours of notice from the town. If such items are not removed upon 24-hours notice, the town shall have the right to remove and dispose of these items and may assess the property owner for the cost of such removal and disposal. The

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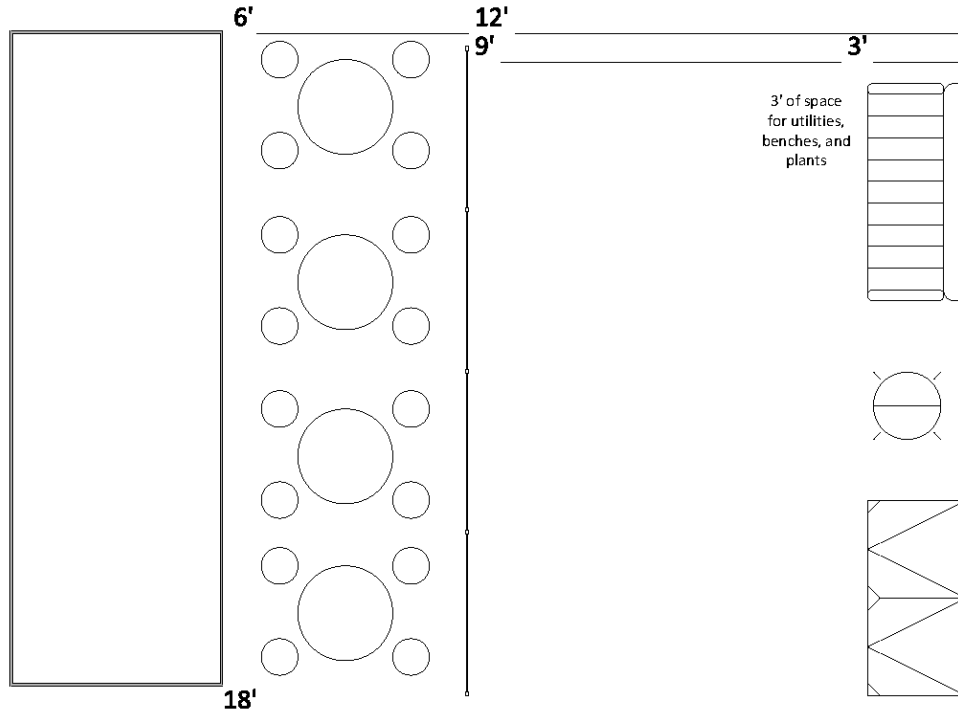
town shall also have the right to remove such items immediately in emergency situations. The town shall not be responsible for damage to removed encroachments under any circumstances. [Permitted encroachments may take place adjacent to the business structure and shall not exceed the width of the business structure. For corner lots, permitted encroachments shall not extend beyond the façade of the building.](#)

- ~~(c) — At 12:00 a.m., all tables, chairs, barricades, stanchions and platforms used in the operation of the sidewalk cafe shall be removed. The area of the sidewalk cafe shall be reopened to the public and shall not be considered part of the premises of the eating and/or drinking establishment. A sidewalk cafe may open at 7:00 a.m. each morning.~~
- ~~(d)~~(c) Boardwalk encroachments. For businesses located on the boardwalk, permitted encroachments ~~may take place adjacent to the business structure offering the service or sale of said merchandise, goods or commodity, and shall not exceed the width of the business structure; and, said service, merchandise, goods, or commodity on display for sale~~ shall allow for a minimum of four feet, six inches of area for unobstructed pedestrian travel. In no instance shall an encroachment exceed more than $\frac{1}{4}$ the width of the boardwalk with the exception of the oceanfront boardwalk. The oceanfront boardwalk may encroach up to six feet from the façade of the building.

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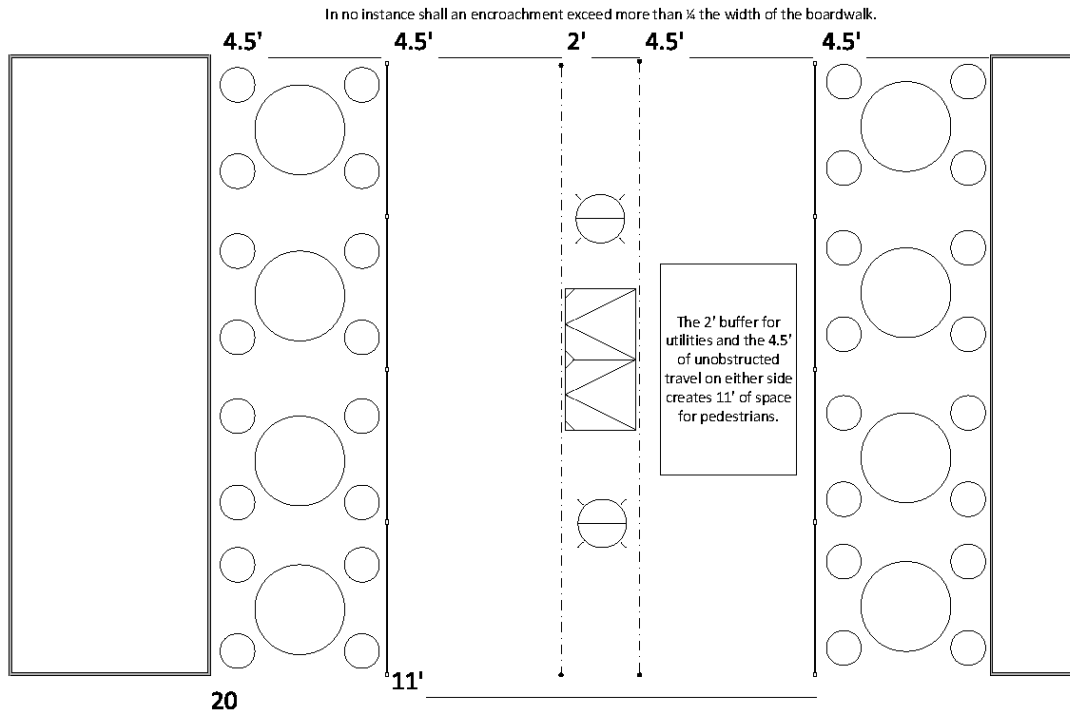
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6' allows more reasonable spacing for 4-top tables in a sidewalk café facing the beach



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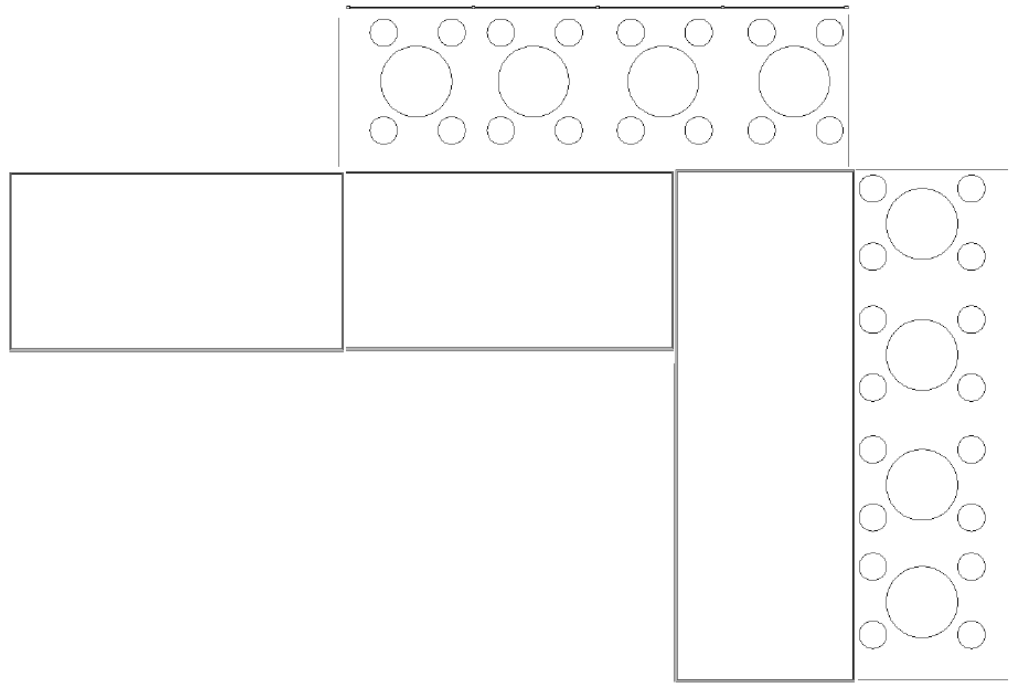
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Corner Lot Layout



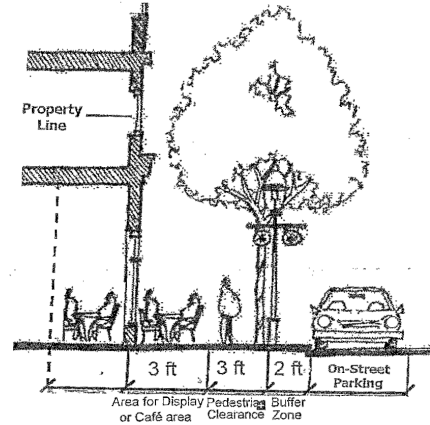
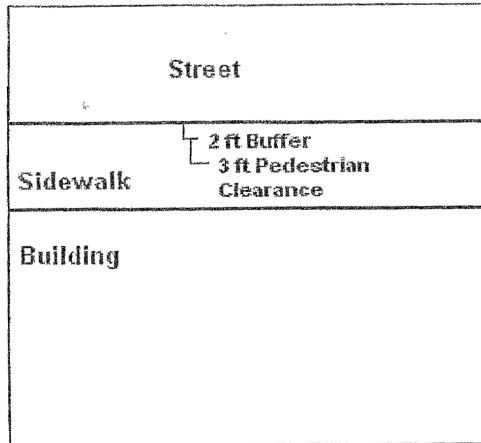
~~(e)~~(d) For businesses in the CBD, not located on the boardwalk.

(1) Encroachments may be allowed on adjacent sidewalks if a minimum clearance of three feet is provided for pedestrian travel.

(2) A two-foot buffer zone, from the face of the street side curb shall not be included as part of the accessible area for pedestrians.

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~~(e)~~(e) For businesses outside the CBD along Lake Park Boulevard.

- (1) Encroachments may be approved outside the CBD on lots adjacent to Lake Park Boulevard that are north of Atlanta Avenue and south of Goldsboro Avenue.
- (2) Where encroachments are located in the right-of-way of Lake Park Boulevard, the property owner shall obtain an approval letter from NCDOT prior to obtaining a revocable encroachment permit from the town.
- (3) Five feet of unobstructed area shall remain on all sidewalks adjacent to approved encroachments.

~~(e)~~(f) Alcoholic beverages in approved encroachment areas. It shall be the responsibility of the operator of the establishment to ensure that patrons comply with these provisions or else be subject to civil penalties. Notwithstanding the provisions of section 18-2, alcoholic beverages may be served in encroachment areas provided the following requirements are met:

- (1) The adjacent business shall otherwise be authorized, permitted, or licensed under the state law and this Code to serve and sell alcoholic beverages for on-premises consumption.
- (2) The encroachment area must be included as part of the premises for which an ABC permit is issued pursuant to G.S. 18B-1001 for the purpose of applying and enforcing state laws regarding the sale or consumption of alcoholic beverages. [All sidewalk café permit holders are responsible for ensuring they meet all state ALE / ABC regulations.](#)

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Town Council

(3) If utilized, barriers shall be:

i. Size: a minimum of 36 inches and a maximum of 48 inches in height, and must be free-standing, stable, and removable.

ii. Base: The base of the barrier shall be square and flat footed and no more than ½ inch in height.

iii. Barrier connections: Rigid wood or metal shall be utilized to connect each barrier. There shall be a minimum of two but no more than three horizontal rigid connections on each barrier.

iv. Signage: Temporary signage may be utilized in between barriers in accordance with Chapter 40 Article VIII. – Sign Regulations.

~~(3)(4) The premises of the encroachment shall be clearly delineated with stanchions indicating the boundaries where patrons must stay within while in possession of alcoholic beverages in open or unsealed containers.~~ The consumption of alcoholic beverages shall only occur while patrons are seated at tables.

~~(4) Signs shall be posted, visible at all exit points from the encroachment area, that it is unlawful to remove alcoholic beverages in open or unsealed containers from the premises. Further, consumption of alcoholic beverages shall only be allowed while seated.~~

- (5) The eating and/or drinking establishment operator shall not have violated any law, regulation, or ordinance relating to the possession, sale, transportation or consumption of intoxicating beverages or controlled substances for the three years preceding the commencement of the sale of alcoholic beverages at the sidewalk cafe.
- (6) Congregating of patrons in or around encroachment areas shall be prohibited. Alcohol consumption outside of the premises or while standing shall be a violation of section 18-2, drinking in public.
- (7) ~~No alcohol shall be served after 11:30 p.m. and all sidewalk cafés shall be closed by 12:00 a.m.~~ Alcohol sales shall be in accordance with G.S. 18B-1004. Any person consuming alcoholic beverages in a sidewalk cafe after such hours shall be subject to section 18-2, drinking in public.

(Ord. No. 16-1030 , 10-11-2016; ; Ord. No. 18-1083 , 4-10-2018)

Sec. 34-67. Permitted canopies in the CBD.

- (a) Canopies shall be permitted over primary doorways and other areas adjacent to public rights-of-way subject to the following restrictions:

Town of Carolina Beach
Ordinance No. 23-1217

11 | Page

Ordinance 23-1217

Town of Carolina Beach
Town Council

- (1) Constructed ~~of canvas or other durable cloth or plastic material, with metal or aluminum framing in~~ [accordance with NC Building Code](#); and
 - (2) Containing no lighting.
 - (3) Canopies shall not protrude more than ~~3½~~ 4 feet from the face of the adjacent structure and not less than eight feet from the ground level upward and parallel with the structure to the bottom portion of the canopy (see details).
 - (4) Canopies shall be maintained in an acceptable condition at all times, including painting of support frameworks, intact structural frameworks for support, and, canvas, cloth, or plastic coverings shall not be torn, unattached from framework, or punctured to create a tattered appearance.
- (b) Where canopies are not properly maintained, and upon receipt of notice of the Building Inspector, the owner shall have 15 consecutive calendar days to renovate or replace such canopy to acceptable standards and failure to comply with such notice shall require removal of the canopy. Failure to comply with the notice of renovation, replacement or removal shall constitute a violation of this section. Sec. 34-68. Cantilevered decks.

Sec. 34-68. Cantilevered decks.

- (a) Cantilevered decks above and over the public sidewalk area shall not extend more than ~~3½~~ 4 feet outward from the adjacent front structure facade; nor beyond the width of the limits of the structure front facade, and shall leave a minimum clearance of ten feet from the adjacent ground/sidewalk elevation to the lowest portion of the cantilevered deck.
- (b) No signage, lights, or other forms of advertisement shall be attached to deck areas that encroach into the right of way.

Sec. 34-69. Requirements for alleyway facades between existing or proposed structures.

All non-publicly dedicated and accepted alleyways or similarities thereof adjacent to public rights-of-way which parallel and separate all or portions of existing or proposed structures and which are not planned or utilized for principal public or private access to such structures or for public or private thru-way shall be covered in order to prevent access by the public to such alleyway, and furthermore the cover (facade) shall be constructed to a height of six feet, acceptable to building and fire codes, and be visually acceptable to public view. The cover (facade), if utilized for emergency fire exits for structures adjacent to the alleyway, shall be easily opened from the interior side. The adjacent structure, existing or planned, which is in the same ownership as the alleyway or adjacent structures, existing or planned, which own the alleyway in common, or portions thereof, shall be responsible for said construction and continued maintenance. All applications for approvals for alleyway coverings (facades) shall be submitted to the Building Inspector in written and plan form describing, in detail, all elements

Town of Carolina Beach
Ordinance No. 23-1217

Ordinance 23-1217

Town of Carolina Beach
Town Council

related thereto. All violations to this provision shall be resolved within a period of 180 consecutive calendar days from the date of receipt of notice of the Building Inspector.

Sec. 34-70. Denial or revocation of permit.

- (a) *Denial.* A permit may be denied if it is found that the granting of the permit would not be in the public interest. Any applicant denied an encroachment shall receive a written statement, outlining the grounds on which the denial is based.
- (b) *Permit revocation.* The Town Manager may revoke a permit issued pursuant to this section, if he or she finds that the establishment operator has:
 - (1) Deliberately misrepresented or provided false information in the permit application.
 - (2) Violated any provision of this Code or county health department regulations.
 - (3) Violated any law, regulation, or ordinance regarding the possession, sale, transportation or consumption of intoxicating beverages or controlled substances.
 - (4) Operations occurring in the encroachment area were in such a manner as to create a public nuisance or to constitute a hazard to the public health, safety, or welfare; specifically including failure to keep the sidewalk cafe area clean and free of refuse.
 - (5) Failed to maintain any health, business or other permit or license required by law for the operation of an eating and/or drinking establishment.
- (c) *Appeal.* The applicant may appeal the denial or revocation of a permit to the town council within 15 working days after the date of the written denial and the town council may take such corrective action as it shall find necessary. The findings and determination of the town council shall be final.

Sec. 34-71. Reservation of rights and terms.

- (a) The town reserves the right to require any encroachment established pursuant to this article to cease part or all of its operation in order to allow for construction, maintenance, or repair of any street, sidewalk, utility, or public building by the town, its agents or employees, or by any other governmental entity or public utility; and to allow for use of the street or sidewalk in connection with parades, civic festivals, and other events of a temporary nature as permitted by the town.
- (b) If such items are not removed upon 24 hours' notice, the town shall have the right to remove and dispose of these items and may assess the property owner for the cost of such removal and disposal. The town shall also have the right to remove such items immediately in emergency situations. The town shall not be responsible for damage to any items moved out of an encroachment area.

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Town of Carolina Beach
Town Council

Sec. 34-72. Reserved.

Editor's note(s)—Ord. No. 16-1030 , adopted Oct. 11, 2016, repealed § 34-72, which pertained to areas of permitted encroachments.

Secs. 34-73-10.2 Reserved.

RATES AND FEE SCHEDULE

Ordinance Violations

Chapter 34-Streets, Sidewalks, and Right-of-Ways

Violation	Ordinance-Code Reference	Fine
Violation of encroachments	34-1	\$50.00/day <u>\$100.00/day</u>
<u>Failure to remove encroachments upon 24-hour notice from Town Staff</u>	<u>34-66</u>	<u>\$100.00</u>
Violation of property numbering	34-110	\$50.00/day

PLANNING AND ZONING PERMIT PROCESSING FEE SCHEDULE

Vending Permits

Sidewalk Café (Annual)

~~\$400.00~~ \$100 + \$2 per sq ft

Ordinance 23-1217

Town of Carolina Beach
Town Council

Be it ordained by the Town Council of the Town of Carolina Beach. Adopted this 14th day of November, 2023.

TOWN OF CAROLINA BEACH

Albert L. Barbee, Mayor

ATTEST:

Kimberlee Ward, Town Clerk

Lynn Barbee
Mayor

Joe Benson
Council Member

Deb LeCompte
Council Member



Jay Healy
Mayor Pro Tem

Mike Hoffer
Council Member

Bruce Oakley
Town Manager

Item 2.

Notice of Violation

Attn to: Ant Bates Motel LLC
Street Address: 124 E Main St
City, State & Zip: Benson, NC 27504

Date: December 20th, 2023

REFERENCE: 3 Cape Fear Blvd, Carolina Beach NC 28428 (Silver Dollar)

To whom it may concern:

A meeting occurred on December 15th between Town staff and staff at the Silver Dollar regarding several concerns for a new barrier that has been placed at the Silver Dollar that currently does not meet the new ordinance that was recently adopted by Town Council.

To ensure that the newly constructed barrier follows the Town ordinances the following things need to be altered:

1. The base needs to be squared. Whether that be shaved to a square or a square base added that is no more than ½ in height.
2. It needs to be detached from the building. The barrier should not be something that needs tools to remove it from the building.
3. There shall be a minimum of two but no more than three horizontal rigid connections on each barrier. Which means that preexisting connections need to be removed to meet this, including the vertical ones.
4. The bar tops that have been attached to the windows also need to be easily removeable. Meaning they cannot act as a permanent encroachment. For them to remain up please ensure that they are easily detachable or modified in a way that they can be folded up.
5. Given the location, the sidewalk was measured at 20ft. The barrier cannot exceed more than 5ft from the building.
6. A revised drawing of the layout of the sidewalk café for the 2024 permit.

This letter is to notify you that the referenced property is in violation of town ordinances and to ensure that there is a timeline in which to have the issues addressed in a timely manner.

Reference of Section & Chapter& Ordinance: Chapter 34, Section 66: Operations

(b) Encroachments shall not involve permanent alterations to public space. Any obstructions used in the encroachment area shall be of a type that is easily removed from the public right-of-way. Encroachments shall be removed within 24 hours of notice from the town.

(3) If utilized, barriers shall be:

- i. Size: a minimum of 36 inches and a maximum of 48 inches in height, and must be free-standing, and removable. Item 2.
- ii. Base: The base of the barrier shall be square and flat footed and no more than ½ inch in height.
- iii. Barrier connections: Rigid wood or metal shall be utilized to connect each barrier. There shall be a minimum of two but no more than three horizontal rigid connections on each barrier.
- iv. Signage: Temporary signage may be utilized in between barriers in accordance with Chapter 40 Article

In no instance shall an encroachment exceed more than ¼ the width of the boardwalk.

The Violation shall be abated in accordance to *Section 18-38* of the Town Municipal Code, compliance must be met within 30 days of the date of this written notice or posting of said property. Failure to meet compliance will result in further action to remove or remediate the condition at the owners' expense.

The owner has 30 days from receipt of the written notice of the determination within which to file an appeal. Appeals of administrative decisions made by the staff shall be made to the board of adjustment. An appeal is taken by filing a notice of appeal with the local government clerk or a local government official designated by ordinance. The notice of appeal shall state the grounds for the appeal (G.S. 160D-405).

Please contact me at 910-458-8492 with any questions or concerns.

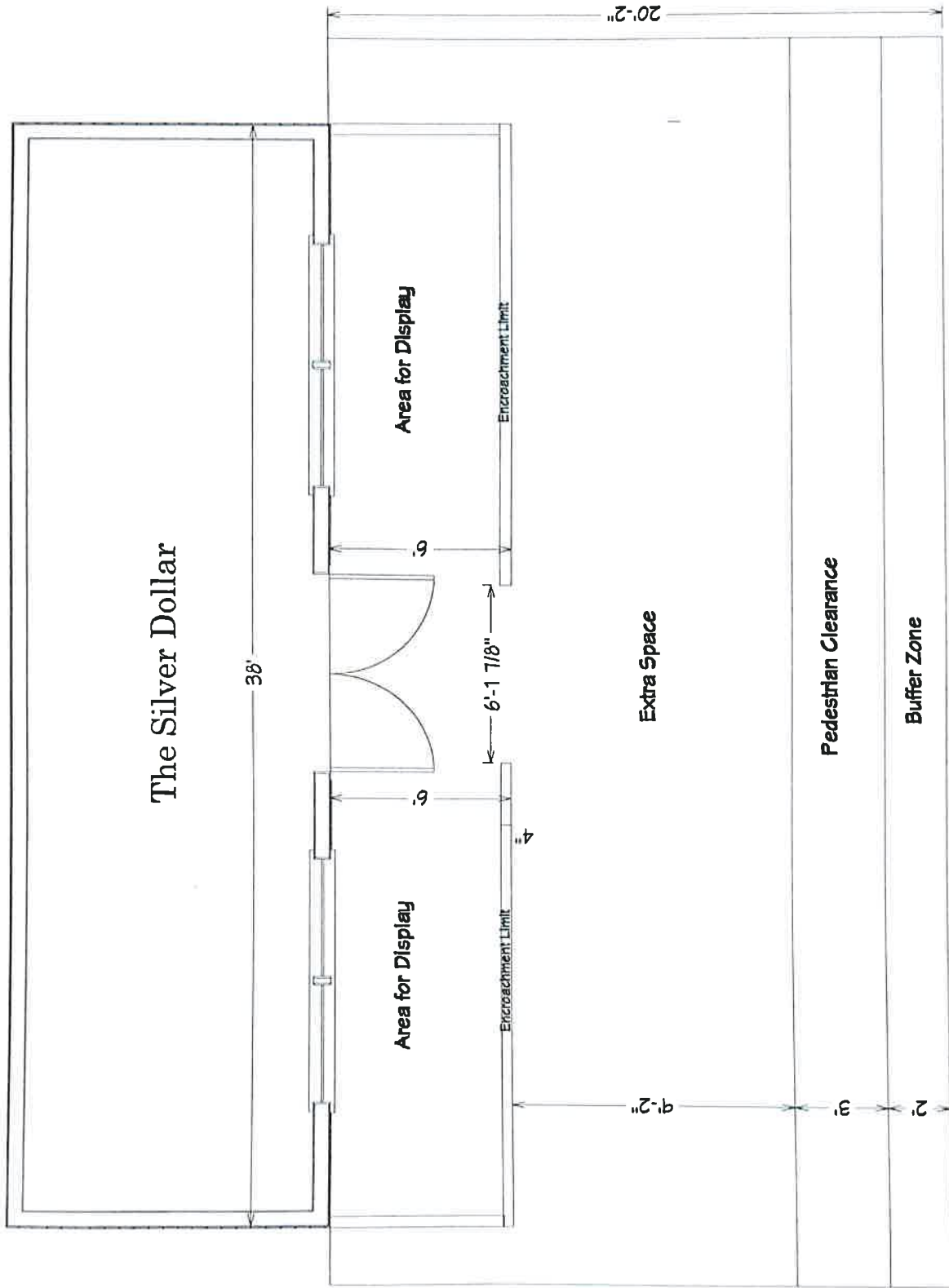
Ashley Martin

12/20/2023

Date:

Code Enforcement Officer

TOWN OF CAROLINA BEACH
1121 N. Lake Park Boulevard
Carolina Beach, North Carolina 28428
910 458 8492
FAX 910 458 2997



Lynn Barbee
Mayor

Joe Benson
Council Member

Deb LeCompte
Council Member



Jay Healy
Mayor Pro Tem

Mike Hoffer
Council Member

Bruce Oakley
Town Manager

Notice of Violation

Attn to: Ant Bates Motel LLC
Street Address: 124 E Main St
City, State & Zip: Benson, NC 27504

Date: March 13th, 2024

REFERENCE: 3 Cape Fear Blvd, Carolina Beach NC 28428 (Silver Dollar)

To whom it may concern:

A council meeting occurred on March 12th, 2024, for a text amendment to change the maximum allowance a barrier may protrude from the business at the boardwalk. Council denied the extra allowance and the barrier needs to be brought into compliance.

To ensure that the barrier follows the Town ordinances the following things need to be altered:

1. It needs to be **detached** from the building. The barrier should not be something that needs tools to remove it from the building.
2. There shall be **a minimum of two but no more than three horizontal rigid connections on each barrier**. Currently there appears to be 6 horizontal connections.
3. The bar tops that have been attached to the windows also need to be easily removeable. Meaning they cannot act as a permanent encroachment. For them to remain up please ensure that they are easily detachable or modified in a way that they can be folded up.
4. The barrier **cannot exceed more than 5ft** from the building. Currently it sits just over 6ft.

This letter is to notify you that the referenced property is in violation of town ordinances and to ensure that there is a timeline in which to have the issues addressed in a timely manner.

Reference of Section & Chapter& Ordinance: Chapter 34, Section 66: Operations

(b) Encroachments shall not involve permanent alterations to public space. Any obstructions used in the encroachment area shall be of a type that is easily removed from the public right-of-way. Encroachments shall be removed within 24 hours of notice from the town.

(3) If utilized, barriers shall be:

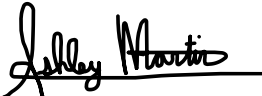
- i. Size: a minimum of 36 inches and a maximum of 48 inches in height, and must be free-standing, stable, and removable.
- ii. Base: The base of the barrier shall be square and flat footed and no more than 1/2 inch in height.
- iii. Barrier connections: Rigid wood or metal shall be utilized to connect each barrier. There shall be a minimum of two but no more than three horizontal rigid connections on each barrier.
- iv. Signage: Temporary signage may be utilized in between barriers in accordance with Chapter 40 Article

In no instance shall an encroachment exceed more than 1/4 the width of the boardwalk.

The Violation shall be abated in accordance to *Section 18-38* of the Town Municipal Code, compliance must be met within 15 business days of the date of this written notice or posting of said property. Failure to meet compliance will result in further action to remove or remediate the condition at the owners' expense.

The owner has 30 days from receipt of the written notice of the determination within which to file an appeal. Appeals of administrative decisions made by the staff shall be made to the board of adjustment. An appeal is taken by filing a notice of appeal with the local government clerk or a local government official designated by ordinance. The notice of appeal shall state the grounds for the appeal (G.S. 160D-405).

Please contact me at 910-458-8492 with any questions or concerns.

Ashley Martin 

03/13/2024

Code Enforcement Officer

Date:

TOWN OF CAROLINA BEACH
1121 N. Lake Park Boulevard
Carolina Beach, North Carolina 28428
910 458 8492
FAX 910 458 2997

ATTACHMENT 6

DEC 2024 PHOTOS:







AUGUST 2024 PHOTOS:











AGENDA ITEM COVERSHEET

PREPARED BY: Haley Moccia, Planner **DEPARTMENT:** Community Development

MEETING: Board of Adjustment – 9/18/2024

SUBJECT: Variance to Chapter 40. Article VII. Fence Regulations from the required 4' height limitation for fences located within the 20' front yard setback for 201 Fayetteville Ave.

BACKGROUND:

The applicant, Pleasure Island Holdings, LLC, is requesting a variance to allow fencing over 4' within the 20' front yard setback from Sec. 40-204. - Height restrictions that require no fence shall exceed four feet in height when located in the front yard setback.

The property is located at 201 Fayetteville Ave and is in the MX zoning district. The Dry Dock Inn and its pool are located on the property. The Dry Dock Inn consists of two buildings and two pools that span across two parcels of land (300 Lake Park Blvd S & 201 Fayetteville Ave.). Each parcel has its own building and pool. The property associated with this variance is located at 201 Fayetteville and is a 12,499.7 sq ft lot. This property is adjacent to Fayetteville Ave. The building and pool on the lot are considered legal non-conforming structures since they do not meet the minimum setback standards for the zoning district for pools and buildings. Any fencing located within 20' of the front property line can be no taller than 4' or 48" (see attachment 2).

The pool decking the fence is located on is raised above the natural grade of the lot. The town ordinance requires fence height to be measured from the highest point of the fence, not including columns or posts, to the existing natural grade. NC Building Code requires, "the top of the barrier shall be at least 48 inches above grade measured on the side of the barrier that faces away from the swimming pool." Since the elevated pool deck is raised above the natural grade of the lot and could be used as a step to climb a shorter fence, the fence height would need to be measured from the height of the raised pool deck. Therefore, the town would approve a 4' fence measured from the pool deck rather than the natural grade because NC Building Code requires an adequate barrier.

Kyle Sears, with Sears Fence LLC, is the contractor who applied on behalf of the property owner in March 2024 to replace the fencing surrounding the pool located on the property. The

application and supporting site plan materials proposed a 52" tall fence, approximately 4" over the allowed 48" height. Kyle Sears was advised by the town plan reviewer that the fencing within the front setback could not exceed 48". They were told they would need to provide an updated fence section with an adjusted fence height to meet the town ordinance regulations.

On April 9th, 2024, Kyle reached out to the town plan reviewer and asked for a permit update. The plan reviewer reminded Kyle the fence railing cannot go over 48" and the town would need a new fence height. May 10th, 2024, Kyle replied to the town planner and asked if a variance would be possible. The town reviewer told Kyle the owners of the Dry Dock Inn already went through a variance a year prior for a similar issue where the fence was installed without a fence permit and it was installed too tall, so the owners should be aware of this issue.

The plan reviewer suggested they try and find other alternatives to avoid a variance. The town reviewer suggested installing a different type of fence that would meet the height requirements. The reviewer also asked if it was possible to anchor the fence posts on the outside of the pool deck, so the bottom horizontal bar sits flush with the pool deck.

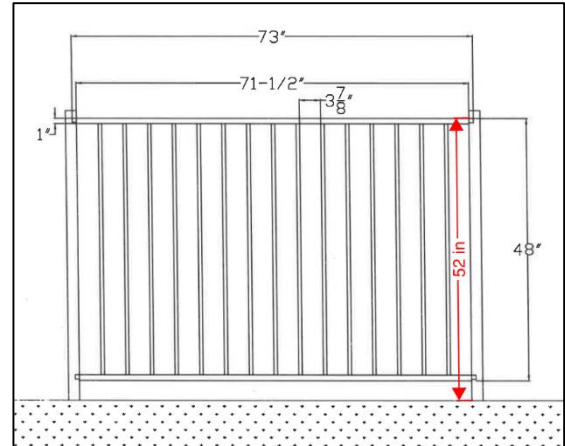


Figure 1. Fence elevations submitted with fence permit application.

After emailing the contractor, the town reviewer gave Andrea Thomas, New Hanover County Health & Human Services reviewer, a call to check if the suggested fencing would meet NC Building Code and Health Department requirements. She said the suggestions were valid and could meet NC Building Code and Health Department requirements while also adhering to the Town Ordinance. She also mentioned she had heard a new fence was already installed onsite. Upon hearing a new fence had been installed, the town reviewer conducted a site visit and confirmed a new fence was installed without a permit and the fence was over 48". The town reviewer emailed the fence contractor and the owner of the property about the fence height violation. When told what their options were, the owner Deanna Lanni, decided they would pursue a variance (See attachment 3).

To resolve the violation situation, the applicant is seeking a variance to the required 4' fence height limitation for fences located within the 20' front yard setback for 201 Fayetteville Ave. If approved, the fence would not need to be replaced or altered to meet the 4' fence requirement.

REQUIRED FINDINGS:

When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

CONDITIONS:

In granting any variance, the Board may prescribe reasonable and appropriate conditions and safeguards, in conformity with this ordinance. Violation of any such conditions or safeguards, when made part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under Article 19 of the Zoning Ordinance:

If the board supports the findings staff recommends, the below condition for the variance would apply:

The variance is granted for the proposed pool fencing only and any new fencing on the property shall conform to the setback height requirements.

ATTACHMENTS:

1. Variance Application
2. Setback Site Plan
3. Email Communications
4. Photos



Application for Variance
TOWN OF CAROLINA BEACH, N.C.

Item 3.

Permit Number: _____

Each application must be printed or typewritten and have all information answered. **It is strongly recommended that the applicant set up a meeting with Planning Staff prior to the submission deadline to ensure the application is complete.** The Town of Carolina Beach requires a licensed attorney to appear in a representative capacity to advocate the legal position of another person, firm, or corporation who is the applicant/owner of record.

Fee: to be submitted with application in accordance with the Town’s annually adopted Rates and Fee Schedule

This petition will be scheduled for the next possible regular Board of Adjustment meeting. The applicant or a representative should be present at the meeting to answer any questions the Board may have. Board of Adjustment meetings are held on the third (3rd) Monday of each month at 6:00 P.M. in the Council Room at the Municipal Administration Building, 1121 N. Lake Park Boulevard, Carolina Beach, NC 28428. Applicants will be informed of any changes in date, time, or location of meetings. Applications and supplementary time for processing and postings are required by the General Statutes of North Carolina. **Application Deadline: 25 days prior to next scheduled meeting.**

Applicant Name: Dry Dock Inn

Applicant Mailing Address:

300 Lake Park Blvd S. Carolina Beach N.C. 28428
Street Address City State Zip

Applicant Phone Number: mobile/work/home (circle one): 910-408-8390 mobile/work/home (circle one): _____

Applicant Email Address: deanna@reachprop.com

Property Owner Name: Pleasure Island Holdings, LLC

Property Owner Mailing Address:

1001 Military Cutoff Rd Ste 101 Wilmington N.C. 28405
Street Address City State Zip

Property address of variance being requested:

201 Fayetteville Ave, Carolina Beach N.C. 28428

Property Size: _____ sq. ft. Zoning Designation: _____

Please give a brief description of requested action:

We are requesting a variance for the back pool fence. The rails are standard 48" but the total height of the fence is 49-1/2" due to the fact our gates need to function and swing open.

Owner Signature: Ladd Gasparovic

Date: 06 / 11 / 2024

Owner Printed Name: Ladd Gasparovic

Variance Requirements

1. The Board of Adjustment conducts a quasi-judicial hearing. You may not contact the Board members once the application has been filed.
2. The Board of Adjustment is not empowered to modify zoning lines or grant a use variance.
3. The Board of Adjustment may attach conditions of approval to a variance to protect surrounding properties.
4. Town Staff will place a public hearing sign on the subject property. The sign must be prominently displayed on the property for at least ten days before the hearing. The property owner is responsible for maintaining the sign during this ten day period.

Variance Considerations

The Board of Adjustment will review all variance requests against the criteria below. In the spaces provided, please indicate the *facts* that you intend to show and the *arguments* that you intend to make to the Board.

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made from the property.

We ordered the lowest possible (standard) fence rails in height measuring 48" which would pass County Codes and Carolina Beach Codes. However, our fence cannot sit directly on the pool deck at the 48" as it would cause our gate to be inoperable. The perimeter of the block wall is hollow; the fence had to be installed using posts on plate which the plate will not allow the bottom rail to go any lower. The holes could not be core drilled due to the hollow wall.

2. The hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

Unfortunately we can not make the fence the same height by lowering it from its current position without compromising the function of the gate. In order to meet your requirement with the fence in place, the bottom rail will have to rest on the concrete not allowing the gate to function at all. By having the gate stay at its current height and lowering the rest of the fence we still will not have a consistent top rail elevation. Core drilling into the pad is also going to present a challenge to lower the fence further as the block under the pad is hollow, possibly not allowing the concrete for the posts to have somewhere to stop.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

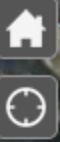
4. The requested variance is consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured and substantial justice is achieved.

We attempted to install the correct fence as per county and town guidelines of 48" and not to exceed 54". We replaced a fence that had noticable holes and gaps and would not pass inspection with the same size fence and dimensions. Our fence is more secure now to the public with a functioning locked gate.

201 Fayetteville Ave

Show search results for 201 Fayettevil...

Item 3.



205

205

201

47

20ft
-77.896 34.031 Degrees

From: Deanna Lanni <deanna@reachprop.com>
Sent: Thursday, May 30, 2024 11:54 AM
To: Haley Moccia
Cc: Kyle Sears
Subject: Re: 24-004950- Dry Dock pool fence

Be Advised: This email originated from outside of the Town of Carolina Beach, NC

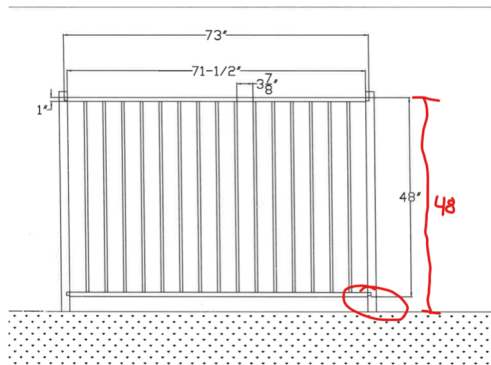
Haley,

I have spoken to Ladd and Kyle regarding our options and Ladd does not want a fence with two different height variations as that will look ridiculous. We are going to go ahead a file for the variance at this point in time. If you could forward the necessary paperwork that would be great. Thank You!

On Thu, May 16, 2024 at 8:39 AM Haley Moccia <haley.moccia@carolinabeach.org> wrote:

Hi Deanna,

In my email to Kyle on April 9th below, the height between cross bars of the fence may be 48", but there is a couple inch gap from that cross section to the concrete pool decking which makes the height of the fence over 48".



Therefore, the proposed fencing would not meet Carolina Beach fencing requirements for fencing within the front set back. I told Kyle this and instead of trying to meet on site or brainstorm other ideas to meet both Town and County pool fencing requirements, you all went ahead and installed the fence without approval... again.

I had asked Kyle if the fence posts could be anchored to the edge of the pool deck instead of on top so the bottom of the cross section could be level with the top of the pool deck (Pic below). I also asked if a different type of fence could be used. When I gave Andrea Thomas a call to check NC Building Code requirements, I asked if a chain link fence could be used to meet NC Building Code requirements and she said it would. There are other options, either possibly through different anchoring or using a different type of fence to meet the Town fence height requirements.



Your options going forward are to either try and anchor the existing fence in a different way (possibly to the side of the pool deck), install a new fence that does not exceed 48", or apply for a variance.

Please let me know which route you will take. I can meet onsite to discuss if needed.

Best,

Haley

[Haley Moccia](#)

Planner

Town of Carolina Beach
1121 N. Lake Park Blvd.
Carolina Beach, NC 28428
910-707-2042
www.carolinabeach.org



From: Deanna Lanni <deanna@reachprop.com>
Sent: Wednesday, May 15, 2024 3:45 PM
To: Haley Moccia <haley.moccia@carolinabeach.org>
Cc: Kyle Sears <kyle@searsfence.com>
Subject: Re: 24-004950- Dry Dock pool fence

Be Advised: This email originated from outside of the Town of Carolina Beach, NC

Haley,

Fencing is sold at heights of 48", 52" and 54" to meet various requirement codes as directed by cities and counties. We went with the lowest one (48") in order to pass code with the town of Carolina Beach AND the county which has less restrictions, as you know. However, you cannot put a 48" fence directly on the ground or pavement or the gates will not function properly and if you move the posts to the exterior it will compromise the integrity of the fencing and the county said we are not allowed to do that. Please advise as we are talking about 1-1/2" variance in order to make sure that our gates work properly otherwise they would be non-functioning.

On Wed, May 15, 2024 at 3:35 PM Haley Moccia <haley.moccia@carolinabeach.org> wrote:

Hi all,

I wanted to check in about my email sent last week. Do you have any updates?

Best,

Haley

Haley Moccia

Planner

Town of Carolina Beach

1121 N. Lake Park Blvd.

Carolina Beach, NC 28428

910-707-2042

www.carolinabeach.org



From: Haley Moccia
Sent: Friday, May 10, 2024 3:10 PM
To: 'Kyle Sears' <kyle@searsfence.com>
Cc: Deanna Lanni <deanna@reachprop.com>; 'anthomas@nhcgov.com' <anthomas@nhcgov.com>
Subject: RE: 24-004950- Dry Dock pool fence

Hi Kyle,

I went by 201 Fayetteville Ave this afternoon and noticed the fence was already installed without a commercial fence permit being issued. The fence is too tall in the front setback. I spoke with Andrea Thomas today at Environmental Health, after receiving your email, and she confirmed the minimum requirements to meet code is 48". Please contact me as soon as possible with a plan to meet the 48" requirement for the fencing located within the front setback.

Best,

Haley

Haley Moccia

Planner

Town of Carolina Beach

1121 N. Lake Park Blvd.

Carolina Beach, NC 28428

910-707-2042

www.carolinabeach.org



From: Haley Moccia
Sent: Friday, May 10, 2024 11:48 AM
To: 'Kyle Sears' <kyle@searsfence.com>
Subject: RE: 24-004950- Dry Dock pool fence

Hi Kyle,

I'll check with NHC Environmental Health Department about the fencing height requirement you mentioned.

Additionally, the Dry Dock Inn has previously done a variance on the fence surrounding the pool on the corner, but this variance was granted after the fence contractor was told it could not exceed 48" and they installed a higher fence anyway. I do not think the Board of Adjustment council members will approve a second one when the owner of Dry Dock already had one granted asking forgiveness after it was installed. This time we have the ability to adhere to the ordinance before the fence is installed. That being said, the owner can go for another variance if they wish, but I would suggest we try and find a way to meet the 48" height before doing that.

Is there a way to put the fence posts on the outside of the pool deck so the bottom horizontal bar sits flush with the pool deck? This way the body of the fence does not exceed 48" from the deck of the pool. Or can you use a different fence type to meet the 48" requirement?

Best,

Haley

[Haley Moccia](#)

Planner

Town of Carolina Beach

1121 N. Lake Park Blvd.

Carolina Beach, NC 28428

910-707-2042

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From: Kyle Sears <kyle@searsfence.com>
Sent: Friday, May 10, 2024 10:38 AM
To: Haley Moccia <haley.moccia@carolinabeach.org>
Subject: Re: 24-004950- Dry Dock pool fence

Be Advised: This email originated from outside of the Town of Carolina Beach, NC

The exact measurements for proper install of the proposed NC pool compliant fence mounted to the concrete with floor flanges is 49 1/2" from the concrete pad. Can we get a

variance for the 1 1/2” difference since this is the minimum height pool fence for a commercial property required by the state of NC?

Kyle Sears

Sears Fence

Phone: 910-279-7573

Email: kyle@searsfence.com

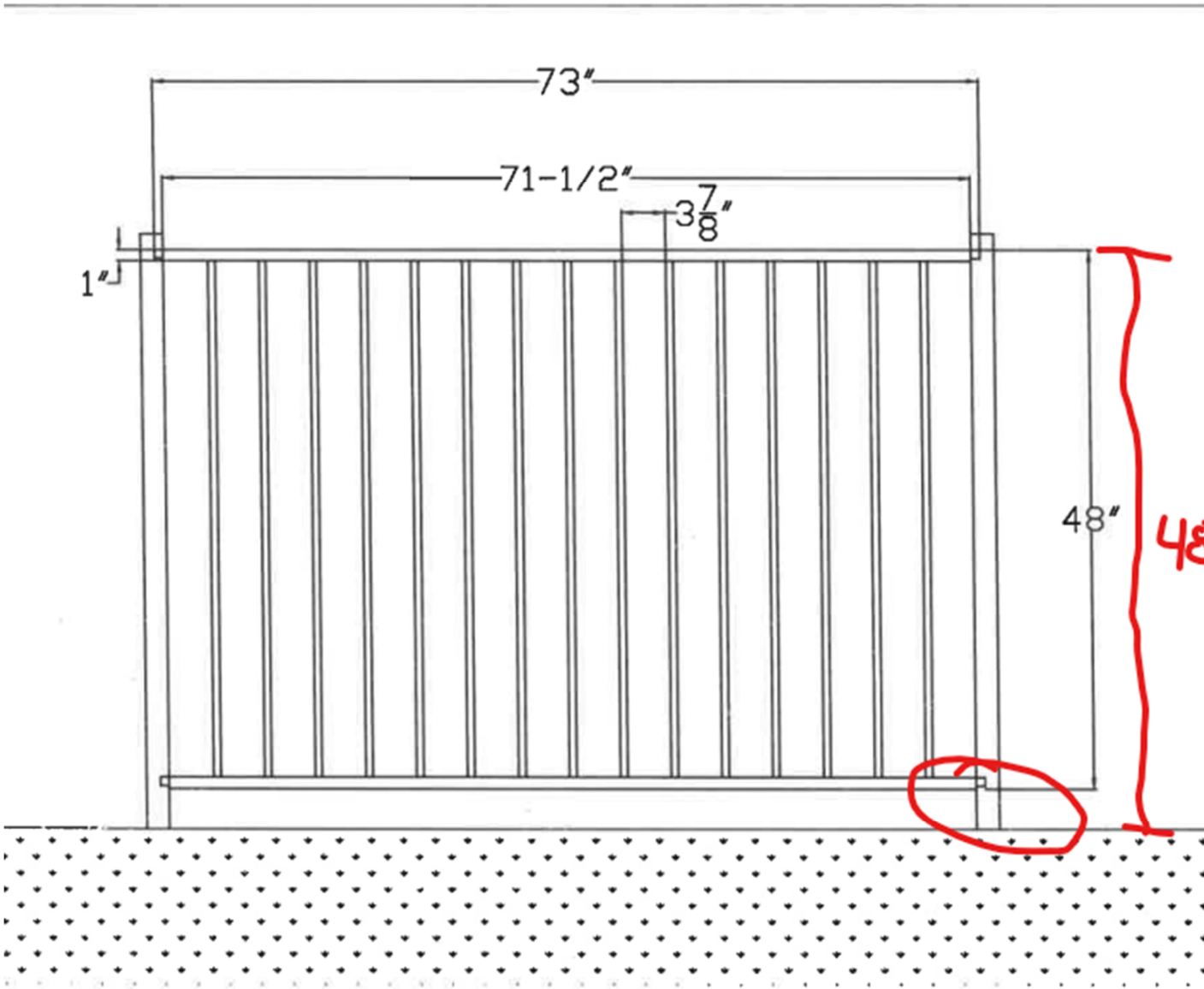
Web: www.searsfence.com

On Tue, Apr 9, 2024 at 1:58 PM Haley Moccia <haley.moccia@carolinabeach.org> wrote:

Hi Kyle,

I took a look at what you are proposing, and our ordinance only allows fences of up to 48” in the front setback measured from the top of the slab or grade. The fence section you submitted shows the main body of the fence being 48” and there is a few inch gap between the main fence section and the slab. Technically, the fence cannot exceed 48” including the gap under the fence. See pic below. I will have to mark it resubmit at the county so you can adjust your plans to meet our fence height requirements for fencing in the front setback.

Let me know if you have any questions.



Haley Moccia

Planner

Town of Carolina Beach

1121 N. Lake Park Blvd.

Carolina Beach, NC 28428

910-707-2042

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From: Kyle Sears <kyle@searsfence.com>
Sent: Tuesday, April 9, 2024 8:41 AM
To: Haley Moccia <haley.moccia@carolinabeach.org>
Subject: Fwd: 24-004950- Dry Dock pool fence

Be Advised: This email originated from outside of the Town of Carolina Beach, NC

H, Good morning. Can you please look into this for me please?

Kyle Sears

Sears Fence

Phone: 910-279-7573

Email: kyle@searsfence.com

Web: www.searsfence.com

----- Forwarded message -----

From: **Thomas, Andrea** <anthomas@nhcgov.com>
Date: Mon, Apr 8, 2024 at 3:31 PM
Subject: RE: 24-004950- Dry Dock pool fence
To: Kyle Sears <kyle@searsfence.com>

It looks like Town of CB still needs to complete their review.

Andrea Thomas

Env Hlth Prog Specialist
New Hanover County - Health and Human Services
(910) 798-6663 p | (910) 798-7815 f
anthomas@nhcgov.com
230 Government Center Drive, Suite 140
Wilmington, NC 28403
www.NHCgov.com

From: Kyle Sears <kyle@searsfence.com>
Sent: Wednesday, April 3, 2024 3:00 PM
To: Thomas, Andrea <anthomas@nhcgov.com>
Subject: Re: 24-004950- Dry Dock pool fence

**** External Email: Do not click links, open attachments, or reply until you know it is safe ****

Hi Andrea,

I wanted to check and see if this was complete? According to Coast, I have one pending and one complete but I do not see any fees.

Thank you

Kyle Sears

Sears Fence

Phone: 910-279-7573

Email: kyle@searsfence.com

Web: www.searsfence.com

On Fri, Mar 29, 2024 at 9:29 AM Kyle Sears <kyle@searsfence.com> wrote:

Ok, Thank you.

Kyle Sears

Sears Fence

Phone: 910-279-7573

Email: kyle@searsfence.com

Web: www.searsfence.com

On Thu, Mar 28, 2024 at 10:02 PM Thomas, Andrea <anthomas@nhcgov.com> wrote:

Thank you. I approved with a note that bottom gap needs to 2” or less and the magna latch at 54”. We will need to do a final inspection. Also my approval is pending CB and building safety’s reviews and approvals.

Andrea Thomas

Env Hlth Prog Specialist
New Hanover County - Health and Human Services
(910) 798-6663 p | (910) 798-7815 f
anthomas@nhcgov.com
230 Government Center Drive, Suite 140
Wilmington, NC 28403
www.NHCgov.com

From: Kyle Sears <kyle@searsfence.com>
Sent: Thursday, March 28, 2024 10:58 AM
To: Thomas, Andrea <anthomas@nhcgov.com>
Subject: Re: 24-004950- Dry Dock pool fence

**** External Email: Do not click links, open attachments, or reply until you know it is safe ****

Andrea,

Yes, the latch will be a magna latch top pull lockable magnetic latch with the top pull release mechanism located 54" from the concrete pad.

Kyle Sears

Sears Fence

Phone: 910-279-7573

Email: kyle@searsfence.com

Web: www.searsfence.com

On Thu, Mar 28, 2024 at 7:27 AM Thomas, Andrea <anthomas@nhcgov.com> wrote:

Kyle,

Do you have the specifications for what kind of latch will be used for the gate? It will need to comply with .2528 of the rules. If you can send this information today, that would be great.

Thank you.

Andrea

15A NCAC 18A Fences (a)(7)

Access gates shall comply with the dimensional requirements for fences and shall be equipped to accommodate a locking device. Effective April 1, 2011, pedestrian access gates shall open outward away from the pool and shall be self-closing and have a self-latching device except where a gate attendant and lifeguard are on duty. Gates other than pedestrian access gates shall have a self-latching device. Where the release mechanism of the self-latching device is located less than 54 inches from the bottom of the gate, the release mechanism shall require the use of a key, combination or card reader to open or shall be located on the pool side of the gate at least three inches below the top of the gate, and the gate and barrier shall have no openings greater than 0.5 inch within 18 inches of the release mechanism;

Andrea Thomas
Env Hlth Prog Specialist
New Hanover County - Health and Human Services
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DEE LANNI
*Dry Dock Inn GM
Property Specialist*
☎ 910-408-8390
✉ deanna@reachprop.com
📍 Wilmington, NC
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✉ deanna@reachprop.com

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AGENDA ITEM COVERSHEET

PREPARED BY: Gloria Abbotts, Senior Planner

DEPARTMENT: Community
Development

MEETING: Board of Adjustment – 9/18/2024

SUBJECT: Appoint a Chair and Co-chair of the Board of Adjustment

Action:

The Board will need to appoint a Chair and Co-chair.