

# CAROLINA BEACH

Board of Adjustment Meeting

Monday, December 18, 2023 – 6:00 PM

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



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## AGENDA

### CALL TO ORDER

### PUBLIC DISCUSSION

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

### NON-AGENDA ITEMS

### ADJOURNMENT



## AGENDA ITEM COVERSHEET

**PREPARED BY:** Jeremy Hardison, Planning & Development Director

**DEPARTMENT:** Planning & Development

**MEETING:** Board of Adjustment – 12/18/2023

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

### **BACKGROUND:**

One of the roles for The Board of Adjustment is to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by staff. The applicant, Oceana Owners Association Inc/Olin Fur, submitted an appeal referencing Sec. 40-425. - Extension or enlargement of nonconforming situations, including land uses and buildings. & Sec. 40-426. - Reconstruction, maintenance, full or partial demolition and renovation of nonconforming situations (Attachment 1 - Appeal Application).

The appeal was submitted after staff received a complaint against staff and the property owner of an existing noncontiguous parking lot located inside the Oceana Subdivision that serves the Carolina Beach Yacht Club Marina with the address of 401 Marina St. (Attachment 2 - location map). The complaint specifically addresses the allowed increase in parking space(s) in a non-conforming parking lot (Attachment - Complaint). A zoning determination letter was sent to Mr. Furr outlining staff's interpretation of Sec 40-425 non-conforming situations (Attachment 4).

### **Non-conforming**

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

In the situation with the Carolina Beach Yacht Club Marina, it consists of two properties. One property is located in a commercial zone MB-1 (Marina Business) that has a building with a residential unit, parking lot, marina with slips, fuel dock, and a retail/eating and drinking barge.

The Oceana parking lot that is owned by the same entity as the marina is utilized to meet the required parking. This parking lot is zoned R-1B (residential). The parking lot is considered non-conforming because it is existing and would not be allowed under the current ordinance. Noncontiguous parking lots located in residential areas are not allowed to serve commercial uses.

### **History of the property**

- February 1982 a CUP was issued for a 372 multi-family residential units in a planned unit development with a marina that was in one ownership for the land that now consist of Spinnaker Point, Oceana Subdivision, and Carolina Beach Yacht Club and Marina. The property was all zoned RA-6 at that time.
- 1985 four multi-family buildings were built, individual units were sold off and the common area was dedicated to Spinnaker Point HOA, the marina had been excavated, and a building was on site (Carolina Beach yacht club & Marina) according to New Hanover tax records.
- 3/8/94 Phase one Oceana Subdivision approved for 32 lots
- 8/9/94 Marina property was rezoned from RA-6 to MB-1
- 9/23/94 Phase two Oceana Subdivision approved for 17 created the parking lot and easement to access the boat slips for the marina (attachment 5 - Plat)
- 1994 Lots were offered for purchase.
- 1996 the property where Carolina Beach Yacht Club & Marina and the parking lot were sold.
- 2019 September the Marina applied for a Conditional Use Permit to add an eating and drinking establishment and a ship store located on a barge.
- 2019 November, petition by Oceana Owners Association to appeal the allowance of the use of a non-conforming parking lot. The allowance was upheld.
- 2020, January the Conditional Use Permit was not passed by Town Council (2-2 vote).
- 2020, April the Marina Owner filled a petition seeking an appeal.
- 2020, May the Oceana Owners Association then filed a verified motion to Intervene.
- 2020, September the hearing of the appeal was cancelled based upon the parties entering into an agreement and resolution.
- 2020, December the agreement was executed to issue the Conditional Use Permit with conditions (Attachment 6 – CUP Consent Order).
- 2021 – A building permit and site plan approval was issued based off of the Conditional Use Permit authorization that depicted 56 parking spaces located in the Oceana parking lot(Attachment 7 - CUP Site Plan).

- 2023 – The Marina has applied for a Conditional Use Permit modification to expand boat slips and proposes to add 7 parking spaces to the Oceana parking lot.
- 2023 - Zoning Permit Final Inspection

When Staff did a final inspection in the Oceana parking lot a transformer was encroaching on two parking spaces. There was also a neighbor's block fence that was encroaching on a parking space in the parking lot of the marina building (Attachment 8 - Encroachments). Neither encroachment was depicted on the approved site plan. The applicant opt to relocate these spaces in the Oceana parking lot under a minor modification approved by staff. This increased the total number of spaces from 56 to 57 parking spaces.

#### Staff's Determination

This appeal is to staff's determination that the additional space located in the Oceana Subdivision is not allowed under Sec 40-425 & Sec 40-426 Extension or enlargement of a non-conforming situation. ARTICLE XIV. - Nonconforming Situations, Sec. 40-425. - Extension or enlargement of nonconforming situations, including land uses and buildings states that "no increase in the extent of nonconformity, except as specifically provided in this section, it shall be unlawful for any person to engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation". The section further states that "the Increase in volume, intensity, or frequency of nonconforming use may be allowed. The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased and the equipment or processes used at a location where a nonconforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind".

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

**BOARD ACTION:** The board of adjustment shall hear and decide appeals decisions of administrative officials charged with enforcement of the zoning or unified development ordinance.

The board can agree or deny staff interpretation on the ordinance Sec 40-425 & Sec 40-426 Extension or enlargement of a non-conforming situation.

#### Attachments

1. Appeal Application
2. Location Map

3. Complaint
4. Zoning Determination Letter
5. Subdivision Plat
6. CUP Consent Order
7. CUP Site Plan
8. Encroachments



RECEIVED  
NOV 17 2023  
Hayden

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

Permit Number: CB A02

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: \$450.00 to be submitted with application

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 second (3<sup>rd</sup>) 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.

Applicant Name: Oceana Owners Association, Inc.

Applicant Mailing Address:  
440 Oceana Way Carolina Bch NC 28428  
Street Address City State Zip

Applicant Phone Number: mobile/work/home (circle one): 704-572-2666  
mobile/work/home (circle one): \_\_\_\_\_

Applicant Email Address: DlntFurr@yahoo.com

Property Owner Name: CBYC, LLC

Property Owner Mailing Address:  
401 Marina St Carolina Bch NC 28428  
Street Address City State Zip

Section(s) of ordinance being appealed: Article XIV Sec. 40-425 Sec 40-426

- 1. Jeremy determination 7/8/19
  - 2. Jeremy determination undated
  - 3. Jeremy determination undated
  - 4. Board of Adjs determination 1/3/20
  - 5. consent order 12/21/20
  - 6. parking lot drawings
7. Google earth pics
- SEE ATTACHMENTS

Item 1.

Please give a brief description of the interpretation:

Article XIV Sec 40-425 Jeremy Hardison's interpretation is  
completely wrong and is 180° from his determination on this same  
situation when he testified under oath on 1/14/20 during the Quasi-Judicial  
hearing for the CUP for CBYC. It is illegal to make a nonconforming  
situation more nonconforming than when it became nonconforming.

Applicant Signature:

Oceana Owners Association, Inc by Olin Furr - Pres.

Date: 11 / 17 / 23

Applicant Printed Name:

Oceana Owners Association, Inc by Olin Furr - Pres

Joe Benson  
Mayor

Steve Shuttleworth  
Council Member

LeAnn Pierce  
Council Member



Tom Bridges  
Mayor Pro Tem

JoDan Garza  
Council Member

Ed H. Parvin  
Interim Town Manager

**Town of Carolina Beach**  
1121 N. Lake Park Blvd.  
Carolina Beach, NC 28428  
Tel: (910) 458-2999  
Fax: (910) 458-2997

July 8, 2019

Jimmy Sanderford  
418 Marina St  
Carolina Beach, NC 28428

Cc: Sam Potter

RE: Complaint received 12/14/2018

Dear Mr. Sanderford,

Per section 40-264 of the Town of Carolina Beach Code of Ordinances, I am providing notice of my final determination the violations alleged in your Complaint filed December 14, 2018. The Complaint alleges that Carolina Beach Yacht Club and Marina is not adhering to a conditional use permit and is creating a public safety issue. More specifically, the violation is described as follows:

"The parking area is being used as a typical marina business parking lot: boat parking, trailer parking, equipment parking, space rental, and customer parking. The CUP specifically states the parking is used for boat slip POV parking only. Furthermore, business parking in a residential area zoned parking lot is not a permitted use. The parking spaces were never constructed according to the approved plans and encroach onto Oceana HOA property. Some spaces, if used, becomes a public safety issue for through traffic. Attached are pictures showing property lines and current parking use".

The Conditional Use Permit referenced in the Complaint was issued on November 15, 2005 and allowed for redevelopment of the existing Oceana Marina. The project authorized demolition of the existing structures and construction of a four story structure consisting of residential condominiums, retail units, fitness center, restaurant and offices. However, the project never started construction and the Conditional Use Permit expired on November 15<sup>th</sup>, 2007. Therefore, to the extent your Complaint references the expired Conditional Use Permit, no alleged violation of those conditions exist.

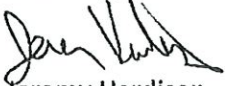
Staff cannot enforce conditions that pertain to a specific permit that has now expired.



Further, and as we have discussed, the parking located inside the gated Oceana Subdivision is a private parking lot which is owned and operated by the Carolina Beach Yacht Club & Marina. The parking lot has a private access easement to get to the marina in Oceana Subdivision. As both the road and parking areas are private property, the Town has no ability to intervene in the dispute as those matters would be a civil matter.

If you have any questions regarding this matter, please contact me at (910) 458-2991.

Sincerely,



Jeremy Hardison  
Planning & Development Director

No mention of nonconforming situation!  
He has no idea that he is confused  
and lost. He says it is a private  
matter!

Cc: Sam Potter

Joe Benson  
Mayor

Steve Shuttleworth  
Council Member

LeAnn Pierce  
Council Member



Item 1.  
Tom Bridges  
Mayor Pro Tem

JoDan Garza  
Council Member

Ed H. Parvin  
Interim Town Manager

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Sam Potter  
Hodges Coxe & Potter, LLP  
3907-100 Wrightsville Avenue Wilmington, NC 28403

Dear Mr. Potter,

I am in receipt of your email to Noel Fox, Town Attorney, dated July 12, 2019. **The purpose of this letter is to provide my final determination on the following issue: whether a parking lot used solely to support a property zoned Marina Business, but located in a residentially zoned district, is a permitted use.** As described below, the Town's position is that the use of the parking lot is allowed.

This area was zoned uniformly as RA-6 until August 8, 1994 when the owners of the Marina petitioned the town to rezone the Marina from RA-6 to MB-1.

The parking lot at issue is shown on the Plat for Section 2 of Oceana recorded on September 28, 1994 in Map Book 34, Page 143 of the New Hanover County Register of Deeds. The plat designates the parking area at issue as "reserved for parking by Oceana Limited Partnership" who owned the Carolina Beach Yacht Club & Marina at that time. The parking lot in questioned was approved by the town as a designated parking area that included an easement to access the Marina.

The Town's previous approval of the parking lot being reserved for the Oceana Limited Partnership remains in effect today.

If you have any questions regarding this matter, please contact me at (910) 458-2991.

Sincerely,

  
Jeremy Hardison  
Planning & Development Director

Jeremy still doesn't get it! Mr. Potter wants a code OR zoning determination by ordinance. He still doesn't give a zoning determination, only his opinion. Oh I guess it is grandfathered in. At this time it was an illegal nonconforming situation, because by ordinance to be legal it must have an SUP to make it non conforming legaly.

Lynn Barbee  
Mayor

Joe Benson  
Council Member

Deb LeCompte  
Council Member



Jay H. Item 1.  
Mayor Pro Tem

Mike Hoffer  
Council Member

Bruce Oakley  
Town Manager

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Olin Furr  
440 Oceana Way  
Carolina Beach NC 28428

AS OF 1/3/20 parking lot is nonconforming situation. Jeremy is playing with words. Illegal to make it larger.

Dear Mr. Furr,

I am in receipt of your violation complaint dated October 6, 2023. As I understand your complaint, you do not think that the number of spaces in a non-conforming parking lot facility can be increased. The purpose of this letter is to provide my determination on whether a non-conforming parking lot facility can increase the number of parking spaces.

Your complaint is in reference to the non-conforming parking lot with the address of 401 Marina St (PIN 3131-74-1321.000), located within the Oceana neighborhood. The operator of the Carolina Beach Yacht Club Marina relocated three parking spaces to the referenced parking lot above. Two of the parking spaces were originally located within the parking lot facility and moved within the same facility due to the location of a transformer. Another space was moved from the Marina building parking lot due to an encroachment of a wall from an adjacent property. This increased the total number of spaces from 56 to 57 parking spaces in the non-conforming parking lot.

ARTICLE XIV. - Nonconforming Situations, Sec. 40-425. - Extension or enlargement of nonconforming situations, including land uses and buildings states that "no increase in the extent of nonconformity, except as specifically provided in this section, it shall be unlawful for any person to engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation". The section further states that "the increase in volume, intensity, or frequency of nonconforming use may be allowed. The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased and the equipment or processes used at a location where a nonconforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind".

Based on Article XIV Sec. 40-425 staff's determination is that the extent of the facility has not increased in size just the volume of the number of parking spaces within the boundary of the facility. It is my determination that the non-conforming parking lot at issue is allowed to increase the number of parking spaces. If you believe my determination is in error and would like to appeal it, please find the attached appeal form. Below is the ordinance language for reference.

#### **ARTICLE XIV. - NONCONFORMING SITUATIONS**

##### **Sec. 40-425. Extension or enlargement of nonconforming situations, including land uses and buildings.**

- (a) *No increase in the extent of nonconformity.* Except as specifically provided in this section, it shall be unlawful for any person to engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation.
- (b) *Nonconformity may extend throughout a completed building.* Subject to subsection (e) of this section, a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this article, was manifestly designed or arranged to accommodate such use. A nonconforming use may not be extended to additional buildings or to land outside the original building.

- (c) *Physical alteration or addition of new structures.* Physical alteration of structures or the placement of new structures on land are unlawful if they result in:
- (1) An increase in the total amount of space devoted to a nonconforming use;
  - (2) Greater nonconformity with respect to dimensional restrictions such as yard requirements, height limitations; or
  - (3) The enclosure of previously unenclosed areas, even though those areas were previously used in connection with the nonconforming activity. An area is unenclosed unless at least 75 percent of the perimeter of the area is marked by a permanently constructed wall or fence.
- (d) *Nonconformity may not be increased to cover more land.* A nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming.
- (e) *Increase in volume, intensity, or frequency of nonconforming use may be allowed.* The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased and the equipment or processes used at a location where a nonconforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and in no violations of other subsections.
- (f) *Repairs and maintenance are encouraged.* Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted and encouraged.

Please be advised that any appeal of my determination must be filed by 11/19/23.

Sincerely,



Jeremy Hardison

Planning & Development Director

LeAnn Pierce  
Mayor

Steve Shuttleworth  
Council Member

Lynn Barbee  
Council Member



Jay Item 1.  
Mayor Pro Tem

JoDan Garza  
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STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

TOWN OF CAROLINA BEACH  
BOARD OF ADJUSTMENT  
FILE NO: 19A-1

**ORDER UPHOLDING INTERPRETATION AND DETERMINATION OF  
TOWN PLANNING & DEVELOPMENT DIRECTOR**

The Board of Adjustment for the Town of Carolina Beach, having held a Hearing on November 18, 2019, to consider an Application for Appeal (Application Number 19A-1) submitted by Oceana Owners Association, Inc., appealing Section 40-72 (Table of Permissible Uses) of the Town of Carolina Beach Zoning Ordinance ("Zoning Ordinance") and an interpretation and determination by the Town Planning & Development Director that the parking lot as designated on the Plat for Section 2 of the Oceana Subdivision recorded on September 28, 1994, in Map Book 34 at Page 143 of the New Hanover County Registry (the "Subject Property"), is an approved and legal nonconforming use and can continue to serve as a parking lot for the existing Carolina Beach Yacht Club & Marina located at 401 Marina Street, Carolina Beach, NC.

At the Hearing, Applicant Oceana Owners Association, Inc. was represented by its counsel, Samuel B. Potter; and the property owner, CBYC, LLC, was represented by its counsel, G. Grady Richardson, Jr.

Having heard all the of the evidence and arguments presented at the Hearing, the Town of Carolina Beach Board of Adjustment makes the following:

FINDINGS OF FACT

1. On December 14, 2018, the Applicant, through its president Mr. James Sanderford, PE, filed a Violation Complaint with the Town of Carolina Beach ("Town") regarding the Subject Property's use as a parking lot for the Carolina Beach Yacht Club & Marina located at 401 Marina Street, Carolina Beach, NC (the "Marina").
2. The Subject Property is located within the Town's zoning jurisdiction and is zoned R-1B residential zoning district. The Subject Property is owned by CBYC, LLC.
3. The Marina property is located within the Town's zoning jurisdiction and is zoned MB-1 commercial district. The Marina property is also owned by CBYC, LLC.

4. The Marina consist of 69 boat slips, a fuel dock and a building with a marina store and office residential unit above.
5. The Subject Property is located inside the gated community of Oceana Subdivision and serves as an off-site parking lot for the Marina.
6. CBYC, LLC and its predecessors in interest have owned the Subject Property in conjunction with the Marina and have used it as a parking lot for the Marina for a period in excess of 20 continuous years.
7. In February 1982, a CUP was issued for 372 multi-family residential units in a planned unit development with a marina that was all held by a common owner, Oceana Limited Partnership, for the land now consisting of Spinnaker Point, Oceana Subdivision, and Carolina Beach Yacht Club & Marina. The property was all zoned RA-6 at that time.
8. In 1985, four multi-family buildings were built and individual units were sold off and the common area was dedicated to Spinnaker Point HOA, the marina had been excavated, and a building was on site (Carolina Beach Yacht Club & Marina), according to the New Hanover Tax Records.
9. Nothing in the record indicates that any person or entity ever challenged the original Oceana master Plan approved by the Town more than thirty years ago, or subsequent plan approvals.
10. On March 8, 1994, Phase one Oceana Subdivision was approved by the Town for 32 residential lots on Oceana's property adjacent to the Marina property.
11. On September 28, 1994, Section 2, Oceana Subdivision was approved with the parking lot and easement to access the boat slips for the Marina (Map Book 34, Page 143, New Hanover County Registry).
12. On August 9, 1994, the Marina property was rezoned by the Town from RA-6 to MB-1.
13. Nothing in the record indicates that any person or entity ever challenged the MB-1 rezoning of the Marina property by the Town in 1994, or the construction of the approved development.
14. The parking lot at issue is shown on the Plat for Section 2 of Oceana recorded on September 28, 1994, in Map Book 34, Page 143, New Hanover County Registry.
15. No person or entity challenged or appealed the Town's approval of Section 2, Oceana or the recorded plat map (Map Book 34, Page 143, New Hanover County Registry) and its contents.
16. In or about 1996, Oceana sold the Marina property and the subject parking lot. The Marina and subject parking lot have been jointly sold and continuously used ever since that time, for more than 23 years.
17. No evidence or arguments were presented indicating that any person or entity has ever challenged or appealed the Marina's use of the subject parking lot prior to the Applicant's December 14, 2018 Violation Complaint.
18. The Applicant's December 14, 2018 Violation Complaint alleged that business parking is not permitted on the Subject Property and that the use of the Subject Property does not adhere to a Conditional Use Permit (CUP) issued by the Town.

- 19. The CUP referenced in the Applicant’s Violation Complaint was issued by the Town in 2005 for 401 Marina St. and approved a project consisting of the demolition of an existing building and the development of 24 residential units, restaurant, ship store, sales office, fitness center, laundry and bath facilities, and a marina dry storage area.
- 20. The 2005 CUP project, however, was never built, and the CUP expired in 2007 along with its conditions.
- 21. Town Staff notified Mr. Sanderford that the Town could not enforce conditions in the 2005 CUP because that CUP had expired and the project was never built.
- 22. The Applicant also submitted pictures with the Violation Complaint depicting boat and trailers being stored in the parking lot.
- 23. Town Staff notified the Marina that the subject parking lot should be utilized for parking of vehicles and not for boat parking, trailer parking and equipment parking.
- 24. The owner of the Marina complied with Town Staff’s directive and removed the boats and trailers from the parking lot.
- 25. Mr. Potter, attorney for the Applicant, requested that Town Staff clarify whether the use of the Subject Property as a parking lot for the Marina is a permitted use under the Zoning Ordinance.
- 26. In response to Mr. Potter’s request, Town of Carolina Beach Planning & Development Director Jeremy Hardison subsequently issued a written determination that the parking lot is allowed based upon the following:

Zoning  
by Jeremy  
                      
It WAS  
an illegal  
NON CONFORMITY

- a. The area was zoned uniformly as RA-6 until August 8, 1994, when the owners of the Marina petitioned the Town to rezone the Marina from RA-6 to MB-1.
- b. The parking lot at issue is shown on the Plat for Section 2 of Oceana recorded on September 28, 1994, in Map Book 34, Page 143, New Hanover County Registry.
- c. The recorded plat designates the parking area at issue as “reserved for parking by Ocean Limited Partnership”, which owned the Carolina Beach Yacht Club & Marina at that time.
- d. The parking lot at issue was approved by the Town as a designated parking area that included an easement to access the Marina.
- e. The Town’s previous approval of the subject parking lot being reserved for the Oceana Limited Partnership remains in effect today.

27. On August 26, 2019, the Applicant filed the subject appeal to the Board of Adjustment from Mr. Hardison’s interpretation and determination, referencing Section 40-72 Permitted Use Table as the Section(s) of the ordinance being appealed.

28. The current Zoning Ordinance Section 40-72, Table of Permissible Uses, addresses parking lots Item 1. uses on noncontiguous lots in the same zoning district but does not address parking lots serving uses that are noncontiguous located in a different zoning district.
29. Pursuant to Zoning Ordinance Section 40-71(b), if a use is not listed in the table of uses, it shall be determined by the Zoning Administrator based upon the Administrator's comparison of similar uses as allowed in similar locations.
30. A parking lot proposed to be located in a different zoning district would not be permitted under the Town's current zoning ordinance. The continued use of the Subject Property as a parking for the Marina is evaluated under the Town's ordinances regulating nonconforming uses.
31. A nonconforming use is a use or nonconforming situation that occurs when a building or use lawfully occupies a property prior to the current ordinance but is no longer permitted under the current ordinance (Zoning Ordinance Section 40-548).
32. A nonconforming use has a right to occupy the property unless it is abandoned and discontinued for a consecutive period of 180 days. Thereafter, the property may only be used only for conforming purposes (Zoning Ordinance Section 40-429).
33. Based upon the development history of the property, previous Town approvals and well-established and continuous use of the Subject Property as a parking lot for the Marina, Town Planning & Development Director determined that the subject parking lot is an approved, legal nonconforming use and can continue to operate as a parking lot to serve the Marina.
34. The parking lot has continued to serve the Marina without abandonment or discontinuance for a consecutive of 180 days since its construction and use.

Based upon the evidence presented at the Hearing, the applicable Town ordinance provisions and the foregoing Findings of Fact, the Board makes the following conclusions:

#### CONCLUSIONS

1. The current ordinance Section 40-72, Table of Permissible Uses, being appealed by the Applicant addresses parking lots serving uses on noncontiguous lots in the same zoning district but does not address parking lots serving uses that are noncontiguous located in a different zoning district.
2. Pursuant to Zoning Ordinance Section 40-71(b), if a use is not listed in the table of uses, it shall be determined by the Zoning Administrator based upon the Administrator's comparison of similar uses as allowed in similar locations.
3. A proposed parking lot to be located in a different zoning district would not be permitted under the current zoning ordinance. The continued use of the Subject Property as a parking lot for the Marina is evaluated under the Town's ordinances regulating nonconforming uses.



- 4. A nonconforming use is a use or nonconforming situation that occurs when a building or use la occupies a property prior to the current ordinance but is no longer permitted under the current ordinance (Zoning Ordinance Section 40-548).
- 5. A nonconforming use has a right to occupy the property unless it is abandoned or discontinued for a consecutive period of 180 days. Thereafter, the property involved may be used only for conforming purposes (Zoning Ordinance Section 40-429).
- 6. Based upon the evidence presented at the Hearing, the FINDINGS OF FACT stated above, and the Town's ordinances, this Board agrees with the Town Planning & Development Director's interpretation and determination in this matter, including the interpretation of Zoning Ordinance Section 40-72, Permitted Use Table.
- 7. Based upon the evidence presented at the Hearing, the FINDINGS OF FACT stated above, and the Town's ordinances, this Board finds and concludes that the subject parking lot is a legal nonconforming use and has the right to continue to occupy the property unless it is abandoned and discontinued for a consecutive period of 180 days.
- 8. Based upon the evidence presented at the Hearing, the FINDINGS OF FACT stated above, and the Town's ordinances, this Board finds and concludes that Town Planning & Development Director's interpretation and determination in this matter should be affirmed and upheld.

THEREFORE, IT IS ORDERED that the interpretation and determination of the Town Planning & Development Director in this matter is affirmed and upheld.

SIGNED this the 3rd day of JAN., 2020.

*Wayne Hartsell, Sr.*

Wayne Hartsell, Sr., Chairman

*[Signature]* 1/3/20

Secretary to the Board

Date Order Filed with Planning Office: JANUARY 3, 2020

Date Order Mailed Certified Mail Return Receipt Requested: JANUARY 3, 2020

We did not appeal to Superior Court because the statute of limitations ran out. So we accept it as a nonconforming situation. But I did notice that you did not include important points made by Mr. Potter. Mr. Potter explained how it was an illegal nonconforming situation because a SUP was never applied for OR issued. Very important. It is now as of this date legal non forming.

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

20-CVS-1444

COUNTY OF NEW HANOVER

IN RE REQUEST BY CBYC, LLC, )

Petitioner, )

v. )

CONSENT ORDER

TOWN OF CAROLINA BEACH, a North )  
Carolina Municipal Corporation and )  
Body Politic, )

Respondent, )

OCEANA OWNERS ASSOCIATION, )  
INC. )

Intervenor-Respondent. )

THIS MATTER appears before the Court for entry of a Consent Order granting the application and request for a conditional use permit submitted to the Respondent Town of Carolina Beach ("Town") by Petitioner CBYC, LLC ("CBYC") (collectively, "Consent Order").

ALL PARTIES, including Intervenor Oceana Owners Association, Inc. ("Oceana"), now consent, by and through their undersigned counsel, to the granting of this Consent Order and CBYC's application and request for a conditional use permit that was submitted to the Respondent on or about 25 September 2019, premised upon the following:

FINDINGS OF FACT

1. Jurisdiction and venue of this action are properly before this Court.
2. By virtue of that General Warranty deed dated 31 July 2019 and recorded on 2 August 2019 in Book 6235 at Page 2175 of the New Hanover Country Registry of Deeds

**A TRUE COPY**  
CLERK OF SUPERIOR COURT  
NEW HANOVER COUNTY  
BY: *Leni M. Knowles*  
Deputy Clerk

("Registry"), CBYC owns the real property located at 401 Marina Street in New Hanover County, North Carolina ("Property").

3. On or about 25 September 2019, CBYC applied to the Town for a conditional use permit (hereinafter "Permit") for certain limited improvements to its Property.

4. CBYC's Property consists of an existing commercial marina including fuel docks, a ship store, an office, residential unit, parking, and related facilities which have been in place for more than 20 continuous years preceding CBYC's Permit application (collectively, "Marina").

5. CBYC's Permit application seeks to (i) extend and widen its existing fuel dock; (ii) add and relocate its fuel pumps; (iii) place a barge adjacent to CBYC's existing dock, where the existing office and ship store will be relocated; (iv) add thirteen (13) parking spaces, a designated loading zone, and two (2) ADA compliant parking spaces within the Property's existing boundary; and, (v) add an outdoor eating establishment to serve hot food and drinks to the Marina's patrons.

6. The 2007 Town of Carolina Beach CAMA Land Use Plan sets forth the Town's desire to encourage "low intensity water-oriented restaurant or other low intensity water-oriented commercial services with public docking and water access."

7. The Town's existing Code of Ordinances permits restaurants, bars, eateries, retail sales, office space, and other marina related uses in the MB-1 zoning district in which CBYC's Property is located.

8. The Town's Ordinances require an applicant for a conditional use permit to meet seven (7) specific and four (4) general standards before being approved. *Carolina Beach, N.C. Code of Ordinances*, § 40-327(c) and (d).

9. The Town's Ordinances also set forth standards for particular uses such as eating and/or drinking establishments, which are specifically permissive uses within the Property's MB-1 zoning district. *Id.* § 40-261.

10. On 14 January 2020, a quasi-judicial hearing was held on CBYC's application for its Permit.

11. At the hearing, CBYC and Oceana presented evidence concerning the seven (7) specific and four (4) general standards before being approved. *Carolina Beach, N.C. Code of Ordinances*, § 40-327(c) and (d).

12. On 30 March 2020, the Town issued its written Order denying CBYC's Permit application based on the 2-2 tied vote of the Town's Council's vote.

13. On 29 April 2020, CBYC timely and properly filed its Petition for Writ of Certiorari to this Court seeking to appeal the Town's Order denying its Permit application.

14. On 29 April 2020, CBYC's Petition for Writ of Certiorari was granted; the Town submitted the record for the appeal; and this Court was scheduled to conduct the appellate hearing on CBYC's appeal on 23 September 2020.

15. On 29 May 2020, Oceana filed its Verified Motion to Intervene of Oceana Owners Association, Inc., and its proposed Response of Intervenor-Respondent Oceana Owners Association, Inc (collectively, "Intervention Motion").

16. On September 15, 2020, Oceana filed an Objection to Notice of Hearing and Motion to Continue the noticed appeal hearing. Thereafter, counsel for CBYC informed counsel for Oceana that CBYC would consent to Oceana's Intervention Motion to keep the noticed date for the appeal hearing.

17. Ultimately, the hearing on CBYC's appeal was canceled based upon the parties' agreement and resolution of the matters between them.

**CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, the parties and this Court agree to the following Conclusions of Law:

1. This Court has jurisdiction over the parties and the subject matter of this proceeding.

2. Oceana's Intervention Motion is hereby granted, thus binding Oceana to the rights and obligations of this Consent Order.

3. Conditional use permits are issued for uses that an ordinance expressly permits in a designated zone. *Humble Oil & Refining Co. v. Bd. of Aldermen*, 284 N.C. 458, 467, 202 S.E.2d 129, 136 (1974).

4. To effectuate the parties' settlement and the entry of this Consent Order, the parties agree that CBYC produced competent, material, and substantial evidence establishing that CBYC's Permit application met all relevant standards, specifications, and requirements set forth under the Town's Ordinances for issuance of a conditional use permit.

Based upon the foregoing, including the consent and request of the parties, and upon a review of the terms herein, the Court believes that the entry of this Consent Order is fair, in the interests of justice, and should be entered.


**NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED** as follows:

1. **CBYC's application for a Permit shall be and the same is hereby GRANTED** upon the following conditions/restrictions:


- a. All of the terms and provisions contained in CBYC's Permit Application, except as may be expressly modified hereinbelow and said modifications shall supplement and amend CBYC's Permit Application.
  - b. CBYC shall fully comply with all Town, New Hanover County, State, and/or Federal rules and regulations, including the departments and agencies of each such entity.
  - c. CBYC shall not play music, whether recorded or live, before 12:00 p.m. each day, will stop playing any such music one (1) hour before closing time each day, and will at all times comply with the Town's noise ordinance.
  - d. CBYC's store, restaurant, fueling and other sales and activities shall cease by 9:00 p.m. beginning on the Friday of Memorial Day weekend of each calendar year through and including the Labor Day holiday of each calendar year. At all other times (i.e., the off-season), said activities shall cease by 7:00 p.m.
  - e. CBYC's restaurant operations will open on a daily basis no earlier than 7 a.m.
  - f. Any newly installed lighting within CBYC's Marina shall be directed downward and away from the residential homes in the Oceana Subdivision.
  - g. CBYC will ensure that trash is picked-up on a daily basis within all areas of its operation, including along its walkways along the Marina and also within the parking lot and spaces owned by CBYC within the Oceana Subdivision.
  - h. Any future conditional or special use permit application by CBYC requesting additional uses of the Property not contemplated in the current Permit may be contested by Oceana notwithstanding this Consent Order. Alternatively, Oceana may choose to require the same restrictions specified herein to be imposed on the use proposed by any such future conditional or special use permit application.
2. Nothing herein shall be construed so as to waive, limit or otherwise prejudice CBYC and its successors and assigns from seeking additional uses and/or improvements to its subject property and marina as may be allowed by the Town's ordinances. Nothing herein shall be construed so as to waive, limit or otherwise prejudice the legal and/or factual arguments of any opponents possessing legal standing to any future applications by CBYC and/or its successors and assigns to make any additional uses and/or improvements to its subject property.

- 3. The terms and provisions of this Order shall be fully enforceable by the Court with all of its authority including, without limitation, the Court's powers of contempt, including an award of attorney's fees for any prevailing party.
- 4. Each party shall bear its own respective costs and attorneys' fees, except in any proceedings under Paragraph 3.
- 5. The provisions of this Consent Order shall be binding upon and inure to the benefit of the parties' respective successors and assigns.

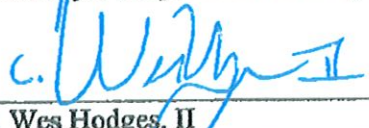
So ORDERED this the 21<sup>st</sup> day of December 2020.

  
 \_\_\_\_\_  
 THE HONORABLE George F. Jones  
 Resident Superior Court Judge Presiding  
 New Hanover County, North Carolina

WE CONSENT:

  
 \_\_\_\_\_  
 G. Grady Richardson, Jr.  
 Counsel for Petitioner, CBYC, LLC

  
 \_\_\_\_\_  
 Charlotte Noel Fox  
 Counsel for Respondent Town of Carolina Beach

  
 \_\_\_\_\_  
 C. Wes Hodges, II  
 Counsel for Intervenor-Respondent,  
 Oceana Owners Association, Inc.





Blown up area  
OF Parking Design  
Allowed

EX. PARKING SPACES  
ARE 9'X18' PER TYPICAL PARKING  
SPACE

EX. PARKING SPACES

16 EX. PARKING SPACES

EXTEND PARKING SPACES  
TO 18' OUTSIDE OF  
EASEMENT.

EX. PARKING SPACES

5 EX. PS

4 EX. PS

3 EX. PS

SPINNAKER F  
UOA INC  
ZONING R-1B (RES)

EXTEND PARKING  
TO 18' OUTS  
EASEMENT

9 EX. PARKING SPACES

KILM INVESTMEN  
ZONING R-1B (RES)

WAYNE BAREFOOT  
ZONING R-1B  
(RESIDENTIAL)

WAYNE BAREFOOT  
ZONING R-1B  
(RESIDENTIAL)

RICKY & BETTY  
YOUNG  
ZONING R-1B  
(RESIDENTIAL)

MILEWSKI  
PROPERTIES LLC  
ZONING R-1B  
(RESIDENTIAL)

MARINA  
ACCESS EASEMENT

41'4" E  
34.06'  
(34)

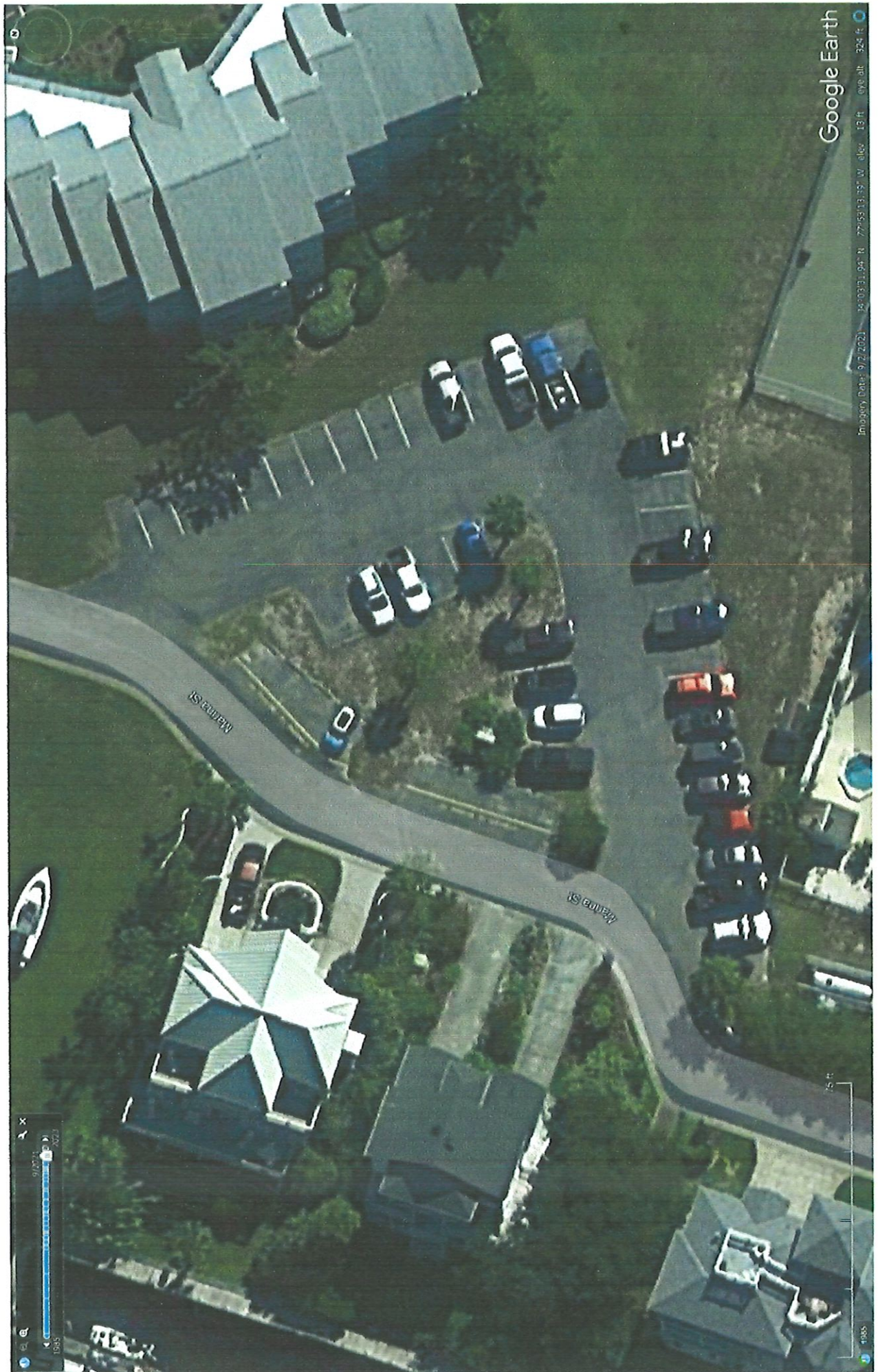
309'

CATHY  
R-18  
(RESIDENTIAL)

Agenda Item - Consider a Conditional Use Permit at 401 Marin...

Hoan

9/2/21  
NO CHANGE!  
Sec. 16-153 Designated Parking



Item 1.

12/31/2001



Item 1.



401 Marina Street

# Attachment 2

Item 1.





1121 N. Lake Park Boulevard  
Carolina Beach, North Carolina 28428  
910 458 8492

## VIOLATION COMPLAINT FORM

In accordance with Section 19.6 of the Carolina Beach Zoning Ordinance the following information is required from all complainants who request the Town to investigate and resolve issues associated with potential zoning violations. Furthermore, by completing and signing this form you acknowledge that the information provided becomes public record and may be distributed to any individual requesting this information.

Complainant's Name Oceana Owners Association, Inc

Contact Information: Address 440 Oceana Way  
Carolina Bch, Nc 28428  
Telephone Number 704-572-2666  
Email Address OlinFurr@yahoo.com

Location and/or Address of alleged violation:

Street Address 401 Marina St. CB, Nc 28428  
Name of Violator (if known) CBYC, LLC and Jeremy Hardison

If the above is unknown, please describe the location or draw the location on the back of this form with street or road names and any other identifiable feature.

Below, please describe the nature of the alleged violation as you have witnessed it.

The 56 space non conforming parking lot behind  
Oceana Private gate. Parking lot is owned by  
CBYC, LLC. Jeremy Hardison has allowed a blatant  
zoning violation concerning permit # COM21-061  
I have attached ample documents + pictures to prove my  
point. List Incl:

1. 4 emails
2. 8 Pages of testimony
3. 10 Pages of drawings + pictures
4. my complaint written out

Olin Furr President Oceana Owners Association, Inc  
Signature of Complainant

Date 10/6/23



**October 6,2023**

**PERMIT #COM 21-061**

**Mr. Hardison I have waited since July to get a response on a very important issue with this permit. You said on 7/18 and 7/25 you would check it out and go verify my complaint but I have not heard from you. A red flag went flying when you posted a zoning notice for a new CUP at CBYC, LLC at 401 Marina street and at the parking lot inside of Oceana. The original CUP is far from finished and has lots of issues and you are already entertaining a new one. I now know why you didn't respond after 3 months! In an email between you and Ed Parvin on 10/2/23 you responded to his question about the nonconforming parking lot and the addition of parking spaces that have been added. Your response Quote" The parking facility is existing, and the extent of the facility has not increased in size just the volume of the number**

of parking spaces within the boundary of the facility.”  
End quote. I had to pick my jaw up off the floor.  
Complete dereliction of your duty as the director not to uphold the ordinances of our Town. You talk out of both sides of your mouth. I have included many pages of documentation to prove my point. Under Oath on 1/14/20 you had intense conversations in front of Town council, Town Atty. and the other Attorneys that questioned you for quite some time about this CUP and all of its implications. You stated very specifically and often as others did that this is a 56 space parking lot in Oceana. On the drawing attached to the application you allowed CBYC to extend the existing out of compliant spaces by moving the cement bumper into the grass and using gravel to fill the gap. By the way it is very unsightly. We disagreed with your premise but after you explained your position we moved on. You were questioned by council and attorneys concerned about increasing parking inside of Oceana and you said there would be no increase emphatically. But Mr. Potter got you to answer the question that leaves no doubt about the truth to this non conforming parking lot when he asked you that by adding to the spaces in order to bring them into compliance you were violating the ordinance and you said, “I would argue that if there was additional information that those parking spaces were encroaching into a right of way that

**making those spaces more conforming or to bring them up to conformity and you are only increasing more land if you're adding parking. They are not adding any parking." End quote. Mr Cooke also under oath said no spaces would be increased beyond the 56. This Town does not deserve a planning director like you! You are a trouble maker. I do not take it lightly when someone in your position distorts, misleads taxpayers for the sake of your pet projects. You should be ashamed! I am requesting that you instruct CBYC or your town staff to remove the cement bumpers and gravel on the three parking spaces that have been added to this non conforming 56 space parking lot immediately.**

**I hope you understand Oceana will pursue this to the end.**

**Olin Furr**



**Subject** Parking lot in Oceana

**From** olin furr <olintfurr@yahoo.com>

**To:** Jeremy Hardison  
<jeremy.hardison@carolinabeach.org>,  
James Sanderford  
<jksanderfordhoa@gmail.com>, John  
Hearn <john.hearn.home@gmail.com>

**Date** Jul 17 at 2:55 PM


Jeremy,


I was reviewing progress at CBYC concerning the CUP and noticed the drawings for the paved parking lot in Oceana are not accurate. CBYC expanded the parking spaces as noted on the plans but also added 2 additional parking spaces. One existing space is unusable due to a transformer. So it is a net increase of one space. The issue is the length of 3 spaces. Two are 17' long and one is 15' long.


Thanks

Sent from Yahoo Mail for iPad

**Subject** RE: Parking lot in Oceana

**From**  Jeremy Hardison  
<jeremy.hardison@carolinabeach.org>

**To:**  olin furr <olintfurr@yahoo.com>,  
James Sanderford  
<jksanderfordhoa@gmail.com>, John  
Hearn  
<john.hearn.home@gmail.com>

**Date**  Jul 18 at 12:26 PM


Thanks Olin,


I will check it out.


Jeremy Hardison  
Planning & Development Director  
1121 N. Lake Park Blvd.  
Carolina Beach NC 28428  
[910 458 2991](tel:9104582991)

[View more](#)

**Subject** RE: Parking lot in Oceana

**From**  Jeremy Hardison  
<jeremy.hardison@carolinabeach.org>

**To:**  olin furr <olintfurr@yahoo.com>,  
James Sanderford  
<jksanderfordhoa@gmail.com>, John  
Hearn  
<john.hearn.home@gmail.com>

**Date**  Jul 25 at 11:32 AM

Thanks Olin,

I will go out and verify.

Jeremy Hardison  
Planning & Development Director  
1121 N. Lake Park Blvd.  
Carolina Beach NC 28428  
910 458 2991

[View more](#)

## Nonconforming parking lots

Jeremy Hardison <jeremy.hardison@carolinabeach.org>

Mon 10/02/2023 4:09 PM

To: Ed Parvin <ed.parvin@carolinabeach.org>

Ed,

The parking facility is existing, and the extent of the facility has not increased in size just the volume of the number of parking spaces within the boundary of the facility.

a. *No increase in the extent of nonconformity.* Except as specifically provided in this section, it shall be unlawful for any person to engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation.

(b) *Nonconformity may extend throughout a completed building.* Subject to subsection (e) of this section, a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this article, was manifestly designed or arranged to accommodate such use. A nonconforming use may not be extended to additional buildings or to land outside the original building.

(c) *Physical alteration or addition of new structures.* Physical alteration of structures or the placement of new structures on open land are unlawful if they result in:

- (1) An increase in the total amount of space devoted to a nonconforming use;
- (2) Greater nonconformity with respect to dimensional restrictions such as yard requirements, height limitations; or
- (3) The enclosure of previously unenclosed areas, even though those areas were previously used in connection with the nonconforming activity. An area is unenclosed unless at least 75 percent of the perimeter of the area is marked by a permanently constructed wall or fence.

(d) *Nonconformity may not be increased to cover more land.* A nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming.

(e) *Increase in volume, intensity, or frequency of nonconforming use may be allowed.* The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased and the equipment or processes used at a location where a nonconforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and in no violations of other subsections.

(f) *Repairs and maintenance are encouraged.* Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted and encouraged.

Jeremy Hardison  
Planning & Development Director  
Town of Carolina Beach

it quick.

Ms. Fox: And just as a reminder this is a quasi-judicial hearing so, Council, you should use a restroom separate and apart from the rest of the building and not speak with anybody about this matter.

Mayor Pierce: Don't talk to anybody. We'll go to the back. OK, guys, we're gonna go ahead and get started with our staff presentation. Yeah, go ahead.

Quasi-Judicial  
Hearing 1/11/20  
Item 1.

Mr. Hardison: Mayor, Town Council, good evening. This is a conditional-use permit for Carolina Beach Yacht Club and Marina, which is located at 401 Marina Street, formerly Joyner Marina and before then it was Oceana Marina. I wanna just go over some of the issues that we've heard and hopefully answer some questions. I'm gonna start off just by looking at what's existing there. So regardless of what would happen tonight, what's existing is existing. They're operating today. They can operate tomorrow. But they're 69 boat slips within this marina. There is one building with a residential unit above with a marina store and an office. There is a fuel dock, and there is

an existing off-site 56-space parking lot, which is the triangle area. That is owned by the applicant. So I wanted to just give kind of a brief history of this area to kinda see how we got here. And different elements of the marina were developed at different times and this area, it's currently there's three entities that you've heard tonight. There's the Carolina Beach Marina and Yacht Club, the applicant, the Spinnaker Point, which is a 72-unit multi-family consisting of four buildings, and the Oceana subdivision, which is a 49-lot subdivision. And but this at one time was all owned by one entity. In 1982 the entity came to Town Council, was granted a conditional-use permit for 372 multi-family units, which mirrored what Spinnaker Point is today. They were, it was approved with their excavating the land for the boat slips, they were approved for parking, tennis courts, swimming pool. As you can see, they had the beach access. There was a marina store associated with it, and certainly after the CUP they went to build and in 1985 they completed four of the buildings, which consist of the 72 units, the tennis courts, the swimming pool, the beach walkway, and the boat slips. But after 1985, the development stalled. There were multiple ideas and plans that were developed for the rest of the area. The original ideas was abandoned until 1994, when a subdivision plat was approved by Town Council for the 49-units Oceana subdivision, or 49 sub lot. At that time, that's when the reference triangle parking lot was created from this plat for this parking, and there was also an easement that was grated to access to the boat slips, where the owners or people leasing the slips would park here and they could access to the marina. At that time, there, with this approval there were gates that were erected, and that was, from testimony from the minutes, is because Spinnaker Point was promised when they were developed to be a gated community. As part of that also subdivision plat, there were slips that divided the section of the slips approximately in half that some went with the marina and some of 'em went with the lot of Oceana Marina. So brings us to the conditional-use permit for the expansion of the marina by adding an eating and drinking establishment. This is not considered a restaurant. It is, by definition, a bar from the zoning ordinance, which does require the CUP. The zoning district of the marina is in the Marina MB-1, the Marina Business District. The parking lot that services the boat slips is in a, the residential gated community of Oceana and Spinnaker

Point. The proposed addition for you to consider tonight is a 40-by-120 barge that they would like to bring in and dock, that's behind the fuel, existing fuel docks. This will be registered as a vessel. They want, would like to put a 40-by-16 building on there that would consist of a concession stand, an office, a retail area. It would have a horseshoe service area for outdoor seating. They'd like to provide hot dogs, sandwiches, and beer and wine, according to their application. They'd also like to expand the fuel docks by 180-by-12 foot to the north. That's shown here. The existing building would be utilized as an office and storage area with remaining, remaining the residential unit above. They are going to be providing additional parking spaces, proximity at the, at the entrance of their parking lot and around the Georgia Avenue bend. It's just an aerial of the existing site. With the additional parking spaces, the 13 parking spaces are gonna be adjacent to what is known as the Georgia Avenue, where it does bend. Georgia Avenue bends and then it terminates into the subdivision of Marina Street. That is a private gated right-of-way, a 30-foot right-of-way. Georgia Avenue, it does open up to a 40-foot right-of-way in that area. The property of where Georgia Avenue was extended is actually owned by the applicant. The Town does have an access easement, 30 foot of that property, which terminates into the Town property, which is the well site that connects back up to Florida Avenue. This was prior to the development of the, of Oceana or of the Spinnaker Point. It was a dirt road. In the early 90s it was improved. Here's the existing condition of the road, and the proposed parking will be to the north. Just adjacent uses, there is a single-family on Georgia Avenue to the south, the Town well to the south, and this was put in in 1983 and just staff had concerned about adequate water in that area, adding 372 units originally, so the developer donated land and the Town did put in a well to provide water. To the northeast, see a single-family is the Oceana subdivision along the adjacent to the marina. East is Spinnaker Point, and the north is as you can see here is the Oceana gate and the beginning access to Carolina Beach Yacht Club. So the applicant must make, there are seven specific standards that make provisions for. One is ingress and egress. There is just an existing drive to get to the marina

off of Georgia Avenue. The existing approved parking lot inside the gate of Oceana subdivision along, with the would provide the parking for the boat slips, and there's also 13 newly designed parking spaces as mentioned between Florida and Georgia Avenue. The parking area that was brought up earlier of with the parking spaces, this is the triangle area inside the gated community pictures of. When I went out there I observed the bold yellow line with letters that says no parking here. Looks like that at one time there were where the stripe there was parking spaces, so I asked the applicant, I said if you do not have a right to park in that area, then you would need to accommodate to make sure you have room for a standard parking space. And on the application you see here in the bold area is where the applicant has adjusted those parking spaces to meet standard parking size. Parking regulations is based off the existing boat slips, the proposed retail, the eating and drinking establishment, and the existing uses on site, which come to 94 parking spaces.

Mayor Pierce: Jeremy, can you go back to that? How, so you figure, so the proposed retail space, is that in the existing building, or are you talking about just on the barge?

Mr. Hardison: That is on the barge:

Mayor Pierce: OK, and so does, you based it on the square footage?

Mr. Hardison: Correct.

Mayor Pierce: How many spaces they would need?

Mr. Hardison: Correct. That's how the parking is calculated.

Mayor Pro Tem Healy: So is that 2.9, is that how many people can be in the bar?

Mr. Hardison: That is based on square footage, so you would round up to the parking. That's just for 110 square feet or 200 square feet for outdoor area.

Mayor Pierce: But you have accounted for the spaces needed for the existing building?

Mr. Hardison: Correct. Yes, the existing uses and proposed uses.

Council Member Barbee: So Jeremy, can you connect the dots? I'm, I'm, I'm back on the issue of if this permit is or this CUP is for putting the barge in place and the people going to the barge don't have access to the parking lot, I'm just trying, going by what I heard here, why is extending those park, how is that connected? I missed something on how the.

Council Member Garza: Get in more boat slips.

Council Member Barbee: How the additional, what is driving the need for additional parking inside the gate. That's really my question.

Mr. Hardison: They are not providing anymore parking spaces than what's already there. There was just a land dispute on if half of that space was actually owned by the association versus the applicant.

Mayor Pierce: So.

Council Member Barbee So are those parking spaces required as a condition of this CUP?

Mr. Hardison: They are of the, correct, yes, of the marina 'cause there is a 69-slip marina, so you have to have a space for every slip; 56 of those spaces are provided inside the marina gate; 13 of 'em are provided outside of the gate onto, to meet the parking requirement.

Council Member Barbee: I, I gotcha. Yeah.

— Mayor Pierce: So they don't have to access that parking lot?

— Mr. Hardison: Correct.

— Mayor Pierce: You're saying they're providing that parking outside of the community, outside of Oceana and that parking lot?

Mr. Hardison: For the, the use of the eating and drinking establishment.

Mayor Pierce: The barge.

Council Member Barbee: But the Town is trying to fix another problem not specific to the barge in that there's not sufficient parking for the existing.

Mr. Hardison: This problem exists regardless of the conditional-use permit.

Mayor Pierce: Right.

Mr. Hardison: If it was in front of you or not.

Council Member Barbee: OK, so it is a separate issue, but your.

Mr. Hardison: Correct.

Council Member Barbee: Solving them together? OK, thank you.

Mr. Hardison: Trash and recycling containers will service the site. It is required to be screened on all three sides. The new building will connect to the existing utilities. No upgrades are required. No landscaping is required from this proposal. At this point, no additional signage is part of the application. There's no new upland structures that are proposed. It's just the barge and the extension of the fuel dock. There are four general conditions they must satisfy before you. The use will not materially endanger the public health or safety. The use will meet all required conditions and specs of the code. That the use will not substantially injure the value of adjoining or abutting property. And that the location and character of the use if developed according to the plan and as submitted and approved will be in harmony with the area in which it is to be located and in general conformity with the Town planning policies. This area is in the Marina Business District. The district is there to establish around the water's edge for maritime uses, water-dependent uses, water-oriented. It also provides for certain residential areas other than non-water-dependent uses as well to align closely with water-oriented uses with the marina. And in, in the Land Use Plan this area's classified as Marina Mixed Use, which does include commercial uses for intensity water-oriented restaurant and services. Can I answer any questions that you may have?

Council Member Barbee: Does general, really a zoning question for you, but where the new proposed parking places are on, I guess that's Georgia. Is that what that is? Is there any sort of land, for that, the way the current zoning ordinance read is there no sort of landscape buffer that's required. I'm thinking about the gentleman across the street. Is there any sort of landscape buffer required there?

Mr. Hardison: It's definitely a unique situation where there's a road on the adjoining property, and normally landscaping would go about the property line. Since this is his, the applicant's property and that they could just about those parking spaces up.

Council Member Barbee: So what you're saying is if they only own to the street and the Town own the street, they would probably have to have landscape buffer, but since the street itself is where their landscape buffer would go.

Mr. Hardison: On the perimeter of the property. Correct.

Mr. Hardison: Correct.

Mr. Richardson: And as we sit here tonight has Town staff made its opinion known in its report that it believes that the marina's application satisfies the seven specific criteria under the Town code as well as the four general requirements for granting by the Council body of the conditional-use application that's been applied for?

Mr. Hardison: Correct, from a the site plan requirements and the conditional-use permit submittals.

Mr. Richardson: Turning your attention because this was a key point in the motion to dismiss on standing issues. Behind you I'm flagging in red the triangular parking lot. Do you agree that that parking lot is located behind the private gate of the Oceana subdivision?

Mr. Hardison: It is.

Mr. Richardson: Do you agree that that parking lot was the subject of the Board of Adjustment hearing we had a few months ago in front of the Board of Adjustment?

Mr. Hardison: Correct.

Mr. Richardson: Do you agree that the applicant, the marina, as part of this application, is not increasing the number of parking spaces in that parking lot?

Mr. Hardison: They are not.

Mr. Richardson: Is the applicant, as part of its application tonight, trying to get approval for every member of the public to be able to access that parking lot inside of the Oceana subdivision?

Mr. Hardison: The Town hasn't or doesn't get involved on who grants access or who gives out the code.

Mr. Richardson: But in the application, is there anywhere where Mr. Cook, on behalf of the applicant, has said that he's trying to get unfettered access to that parking lot for members of the public?

Mr. Hardison: I have not heard that.

Mr. Richardson: And in fact, in order to support, there's 69 boat slips in the marina. Is that correct?

Mr. Hardison: Correct.

Mr. Richardson: And those 69 boat slips have been there for over 25 years, correct?

Mr. Hardison: Yes.

Mr. Richardson: And in order to support the boat slip owners and/or their renters' use of the boat slips, they must have the ability to park in the 56 spaces in that parking lot in the Oceana, correct?

Mr. Hardison: Correct.

Mr. Richardson: Just as they've been doing for over 25 years, correct?

Mr. Hardison: That's correct.



Mr. Richardson: And just so we're clear, with the parking lot inside of the Oceana with the 56 spaces, plus the 13 proposed spaces on the marina's own property, does the marina's application satisfy the Town's code of ordinances for parking?

Mr. Hardison: Correct.

Mr. Richardson: In this Town's, in the staff's review of the marina's application, did you also review the Town's governing Land Use, CAMA Land Use Plan?

Mr. Hardison: Correct.

Mr. Richardson: Did you find the marina's application to be consistent with the Town's CAMA Land Use Plan?

Mr. Hardison: It was consistent with the desired uses in that classification area.

Mr. Richardson: I have no further questions of Mr. Hardison at this time. Again, we would move into the record the staff's presentation that we've just gone through as Exhibit 1 for the applicant. I'll, I'll I'm sure Mr. Potter has some questions. I'm gonna sit down. I'll leave my stuff up here.

Mr. Potter: Mr. Hardison, I'm gonna be brief 'cause I'll just recall you on direct, but just a couple follow-up questions to Mr. Richardson's. Mr. Hardison, it's fair to say that Town staff viewed the applicant's CUP application as holistic for all of the property that's part of this project. Is that correct?

Mr. Hardison: Correct.

Mr. Potter: So you added the, all the parking spaces together to come up with 95 parking spaces that are required for the overall project. Is that correct?

Mr. Hardison: In order to accommodate the, the proposed additions for parking we had to consider the existing uses on site.

Mr. Potter: And we talked a little bit about this previously, or Mr. Richardson asked you, again looking, I know you can't see but you can probably imagine what I'm pointing at here, are these parking spaces within the Oceana subdivision. Do you see those?

Mr. Hardison: Correct.

Mr. Potter: OK, and we've talked a little bit about the Board of Adjustment hearing and your opinion as to that parking lot previously, is it your opinion that the parking lot within the Oceana subdivision that we're talking about here is a nonconforming use under the Carolina Beach Town ordinances?

Mr. Hardison: Correct.

Mr. Potter: OK, so currently as it sits it's nonconforming, in your opinion, previously and currently is that it's a permitted or a legal nonconforming use because it was previously approved by Town Council. Is that correct?

Mr. Hardison: That's correct.

Mr. Potter: OK, and you would agree, would you not that the applicant has agreed with my client and with you that the current parking spaces encroach onto Oceana property and need to be moved within the applicant's property. Is that correct?

Mr. Hardison: I saw lines that it would be very confusing to the public or to a boat owner on

where to park, so I would want that clarified to make sure that those spaces could meet a standard parking space.

Mr. Potter: And the applicant has agreed as part of this to modify their parking spaces, to move them into the open space adjacent to the current parking spaces. Is that correct?

Mr. Hardison: Correct. I'd say if there was an issue and that is actually the private drive of the right-of-way, then those spaces would need to accommodate a standard space.

Mr. Potter: Mr. Hardison, I, I don't know that you have the code committed to memory, but I'm gonna ask you if you are familiar with Section 40-425 of the Carolina Beach ordinances entitled extension or enlargement of nonconforming situations.

Mr. Hardison: I'm familiar with it.

Mr. Potter: Can I approach and show it to you?

Mr. Hardison: Yeah, certainly.

Mr. Potter: Mr. Hardison, in particular I'd direct your attention to 40-425d, and I, I'm gonna ask you this, if I read this correctly. Does 40-425d of the Carolina Beach code of ordinance state that a nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming.

Mr. Hardison: That is, you want me to just confirm that's what it says?

Mr. Potter: That's what it says. Yes.

Mr. Hardison: Yes, sir.

Mr. Potter: And the applicant is proposing to cover more open land than they previously covered by moving these parking spaces into the open undeveloped land that's adjacent to them, are they not?

Mr. Richardson: Objection. Number one, this has been litigated at the Board of Adjustment. A ruling has been made. You're bound to the ruling. This isn't before this Council tonight on the board on the application for a conditional-use permit, and it's also not covering the land distinct in the footprint of the parking lot. On those bases, I will render my objection.

Mr. Potter: Just, just so, I guess.

Ms. Fox: Well, Mr. Potter, to the extent you're getting ready to re-litigate issues that have been taken up by the Board of Adjustment where an order's been entered, where you have a right of appeal, I would suggest that you steer clear of that.

Mr. Potter: And I would submit this was not part of that at all. That had to do with a zoning issue. This has to do with whether or not the paving is going to be extended to land, which it was not current previously on as part of this project.

Mr. Richardson: He's had the right of the affluent. They can appeal to the Superior Court, 'cause they challenged this very thing at the Board of Adjustment.

Mr. Potter: That's absolutely false, Grady.

Mr. Richardson: It is not false.

Mr. Potter: Did not say a word about that.

Mr. Richardson: He did. The whole night was about it.

Mr. Potter: Well, the good thing, great thing is there's a record, so.

Mr. Richardson: And 34 findings of fact.

Mr. Potter: Well, show me. Where are the findings of fact in the order, Grady, that have to do with the expansion of the parking lot?

Mr. Richardson: What I know is you challenged the parking lot. You lost. Your remedy.

Mr. Potter: Challenged the zoning of the parking lot.

Mr. Richardson: Your remedy, exactly. Your remedy.

Mr. Potter: This is not a zoning question.

Mr. Richardson: Your remedy is to the Superior Court on appeals.

Mr. Potter: Well, let him answer the question and then you, we can deal with that. Mr. Hardison, is the proposed plan submitted by the applicant, does it contemplate covering more land for the parking lot than it previously did?

Mr. Hardison: Yeah, and so, Ms. Attorney, is it to proceed?

Ms. Fox: Yes.

Mr. Hardison: I would argue that if there was additional information that those parking spaces were encroaching into a right-of-way that the making those spaces more conforming or to bring 'em up to conforming is not, this is increasing more land if you're adding parking. They are not adding any parking. They are just simply trying to conform to the parking standard of what a dimensional standard parking space is.

Mr. Potter: Irrespective of the language in the ordinance, are they expanding the parking lot to cover more land than it previously covered as part of this?

Mr. Hardison: They're not expanding the number of parking spaces or intensity of the use.

Mr. Potter: But are they covering more land, more dirt?

Mr. Hardison: You could say they're subtracting from where their parking spaces were, they're just moving, but I don't, I don't believe they're in violation of the nonconforming section. We're simply bringing the parking spaces to conform with dimensional requirements.

Mr. Potter: Mr. Hardison, you have that notepad, I mean, that notebook up there in front of you. You testified earlier that there were no landscape buffering requirements that this proposal does not meet. Is that correct?

Mr. Hardison: Correct.

Mr. Potter: That was not your opinion back in October, though, was it?

Mr. Hardison: For the Planning and Zoning?

Mr. Potter: That's correct.

Mr. Richardson: Mr. Cook, let's get one thing into the record on top of what Mr. Hardison has already testified about. For the parking lot inside of the Oceana, are you in any way as part of this application seeking to increase the number of parking spaces of beyond 56 spaces that have been there for 25 years or longer?

Mr. Cook: No, sir.

Mr. Richardson: In, is any part of your application on behalf of the marina seeking to have members of the public who have no ownership of boat slips, no rental right in boat slips to just gain access into the Oceana and use that 56-lot parking, parking lot inside of the Oceana?

Mr. Cook: No, sir. In fact, can I expand on that?

Mr. Richardson: Sure.

Mr. Cook: So, over the past six eight months we've had this issue come up. How are we gonna handle this? And so during the P&Z we, I wish we'd have brought 'em tonight, but we brought the stickers that our slip holders will get, and we informed the Oceana's president several months back that they had every right to tow anybody that does not have a sticker that's inside of that 56-lot parking lot, that we'll police it with our dock master and our dock hands. They'll go be cleaning up trash or anything that's inside of there on a, we do it on a weekly basis anyway, but we will go in there and if there's someone in there that doesn't have a sticker, we'll tow 'em. We've given Oceana permission. If you see someone in there that does not have a sticker, tow 'em.

Mr. Richardson: And do you stand by that as part of your application tonight?

Mr. Cook: Yeah, we've already made the stickers, and they're, we plan on sending them out as soon as this is over.

Mr. Richardson: As part of the marina that your acquisition, did you have to acquire financing to buy it?

Mr. Cook: We did.

Mr. Richardson: And what was the approximate amount of the financing?

Mr. Cook: First round was 2 million.

Mr. Richardson: And are, are you under kind of a construction advance loan where, based upon progress then you get a draw to finish out the improvements to the marina?

Mr. Cook: So we refinanced late 2019, and we secured a \$800,000 expansion loan to do the improvements to the marina.

Mr. Richardson: And if you get approval, you'll be able to begin implementing those improvements.

Mr. Cook: Yeah, we're under the gun to start as soon as possible.

Mr. Richardson: Behind you and I've got a hard copy is what I've marked in advance as Application Exhibit 2, does that appear to be a PowerPoint slide presentation that Ms. Carpenter and I have assembled on your behalf leading into tonight?

Mr. Cook: It is.

Mr. Richardson: Have you reviewed the PowerPoint slide presentation for its accuracy?

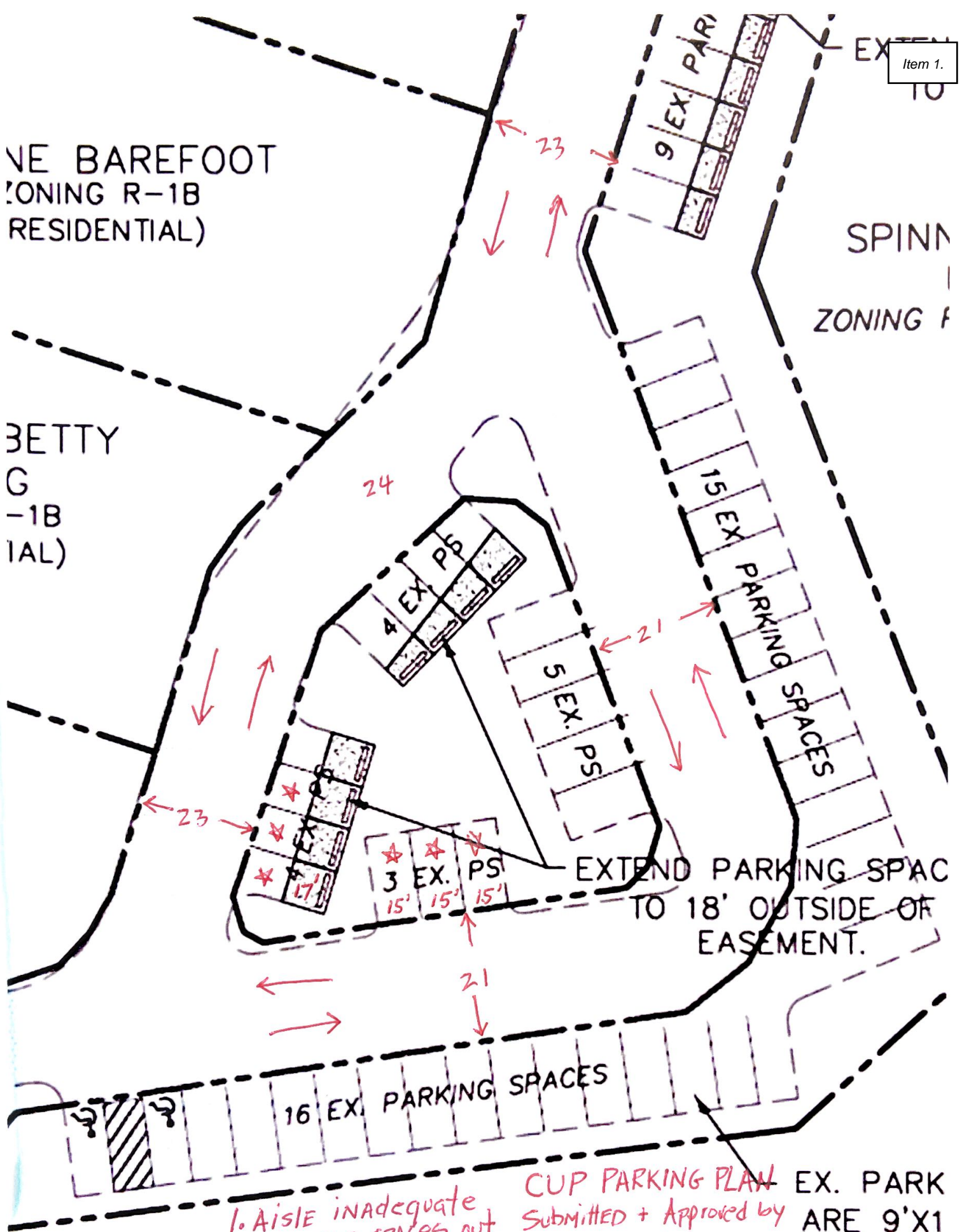
Item 1.  
The App  
Statement under  
oath.

NE BAREFOOT ZONING R-1B (RESIDENTIAL)

BETTY G -1B (RESIDENTIAL)

SPINN ZONING F

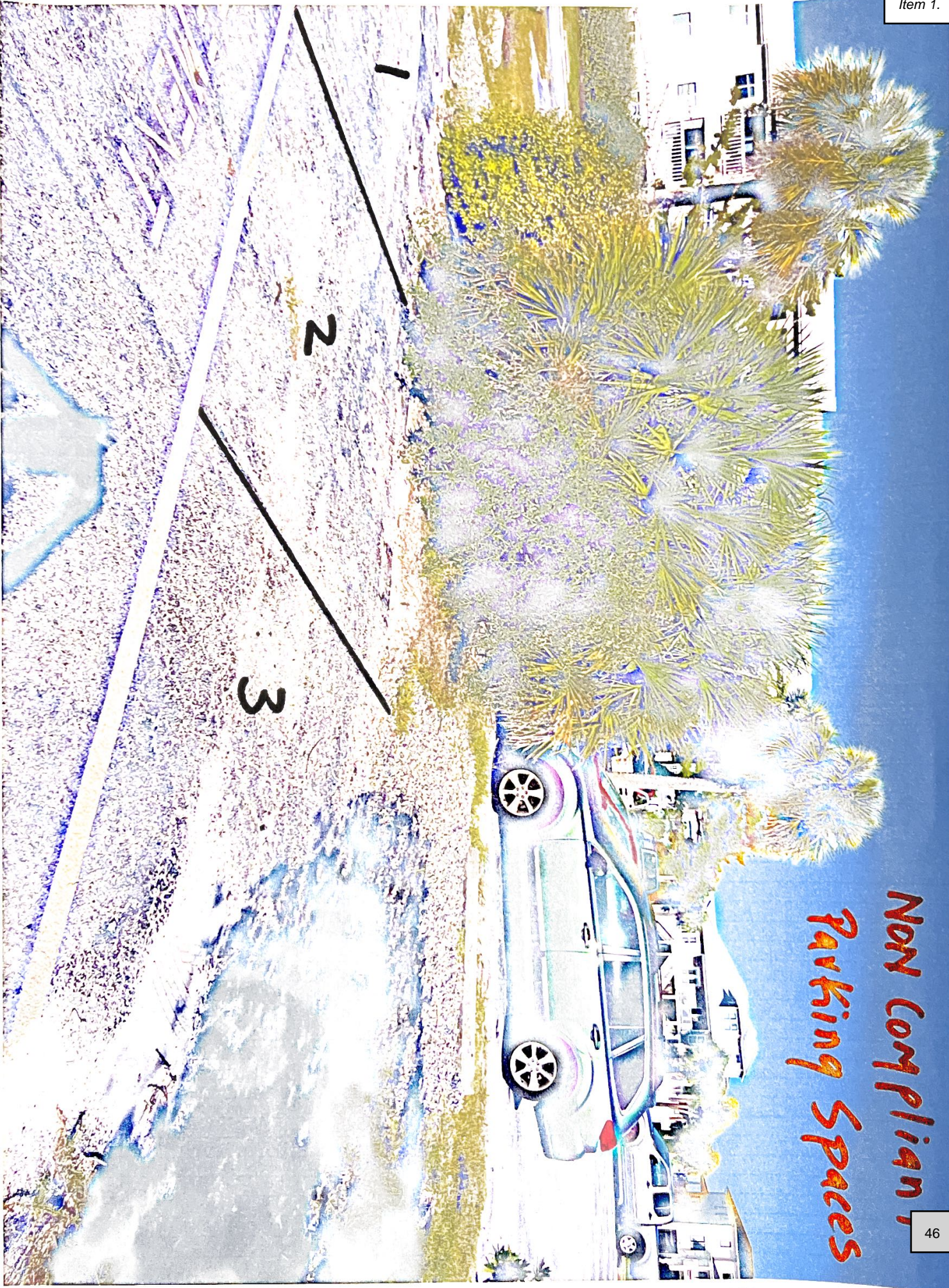
Item 1.



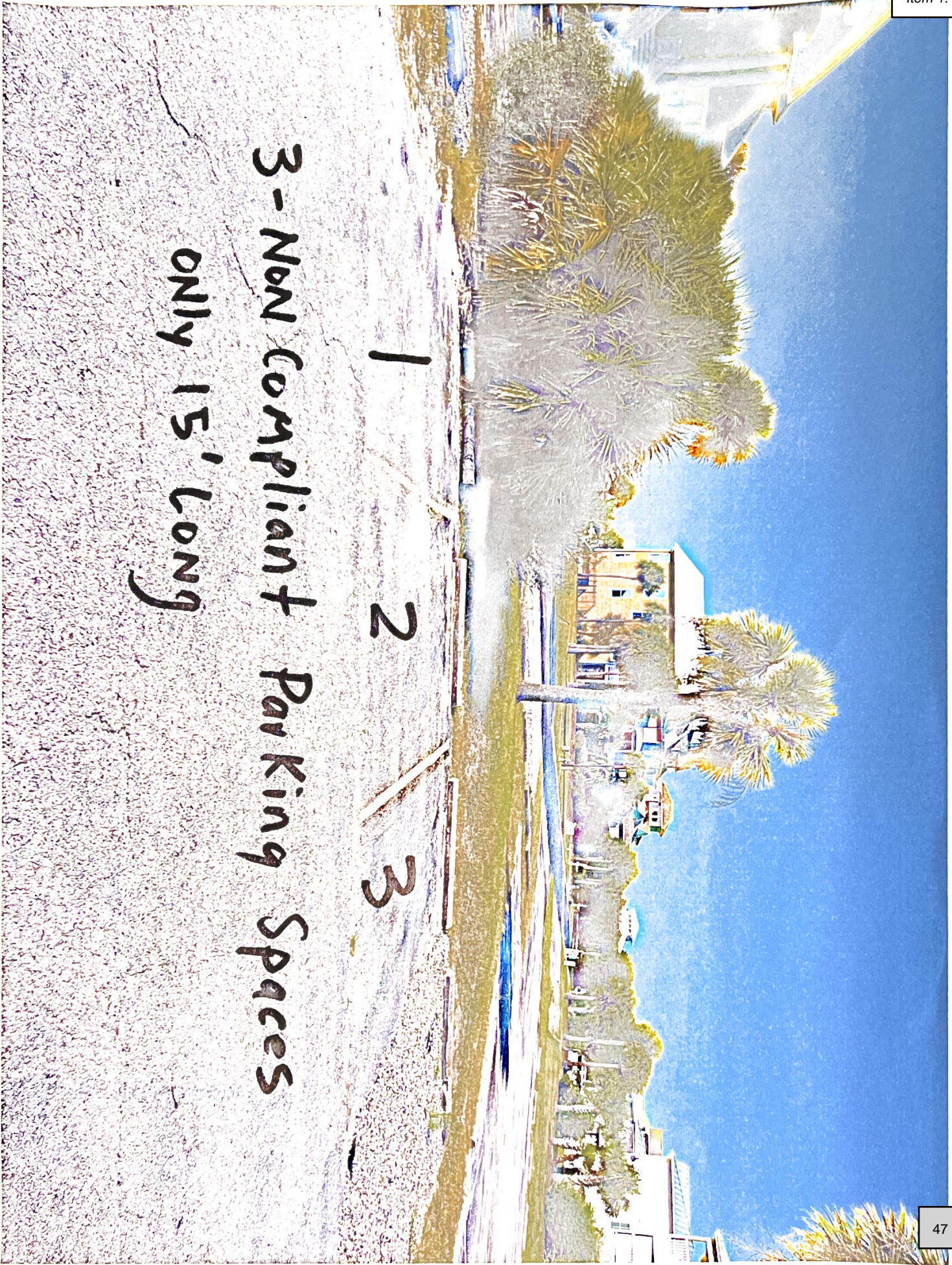
1. Aisle inadequate  
2. 6 PARKING SPACES out of spec.

CUP PARKING PLAN Submitted + Approved by Planning 1/14/20

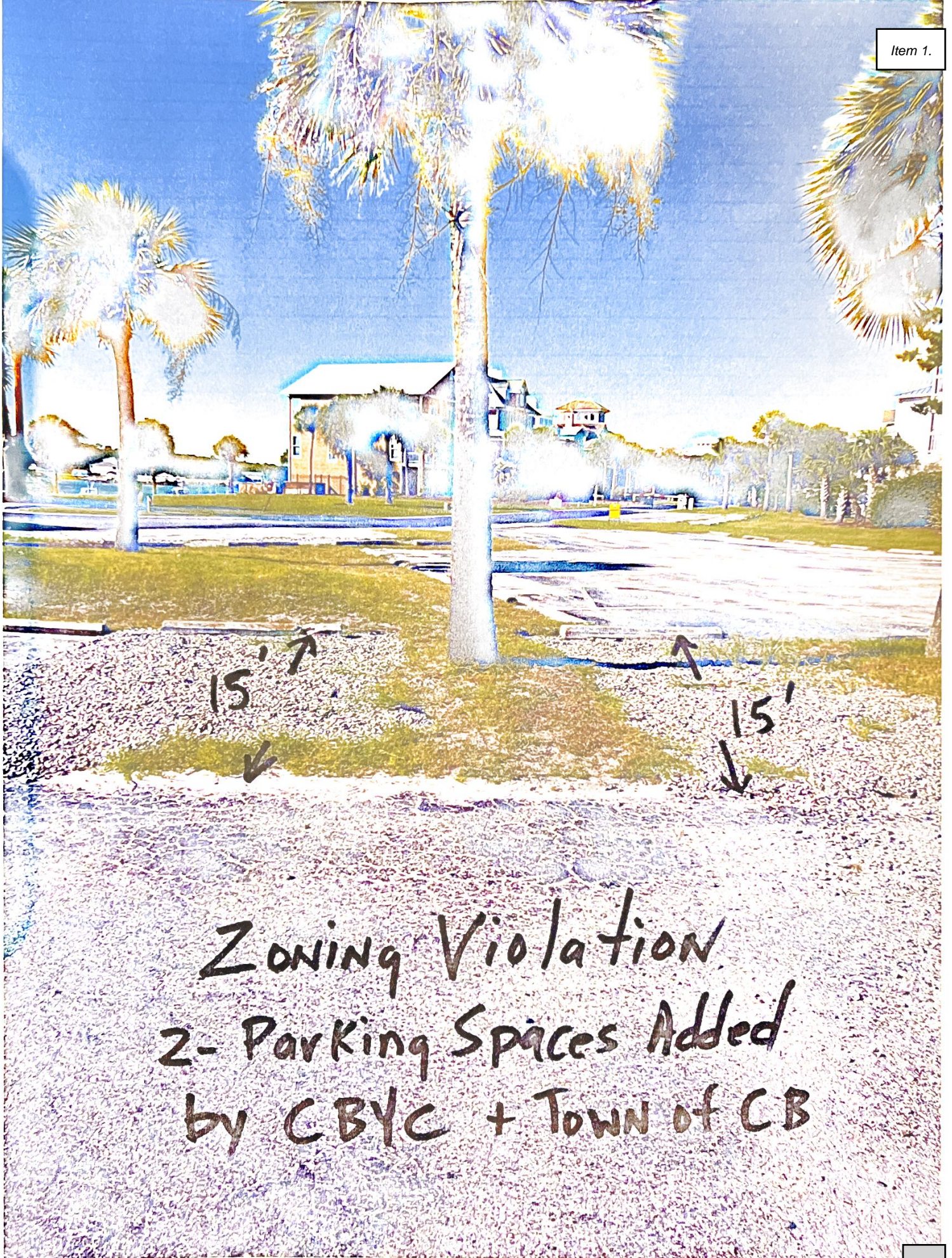
EX. PARK ARE 9'X1 TYPICAL



# Non Compliant Parking Spaces

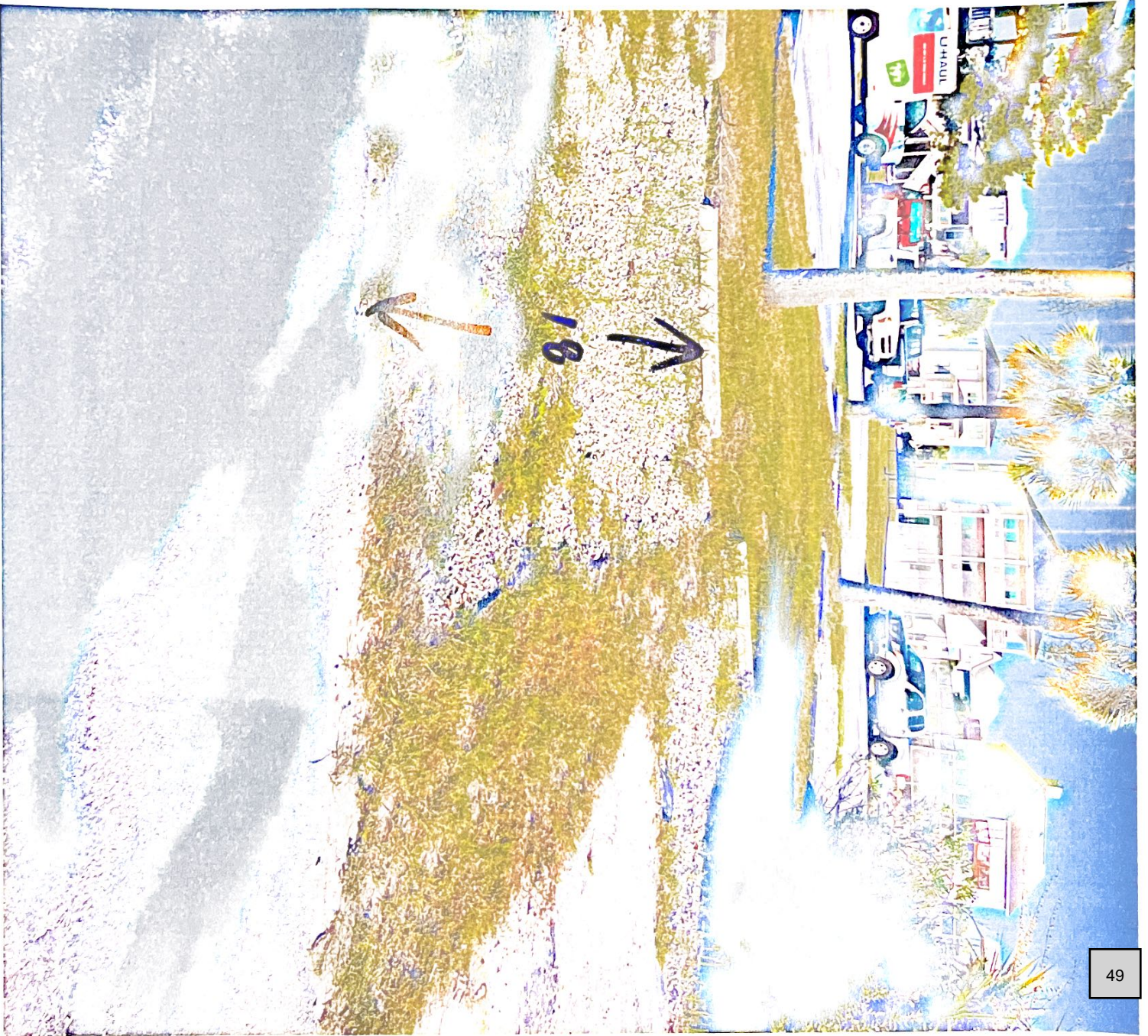


3-Non Compliant + Parking Spaces  
ONLY 15' Long





Zoning Violation  
Parking Space Added  
by CBYC + Town of CB



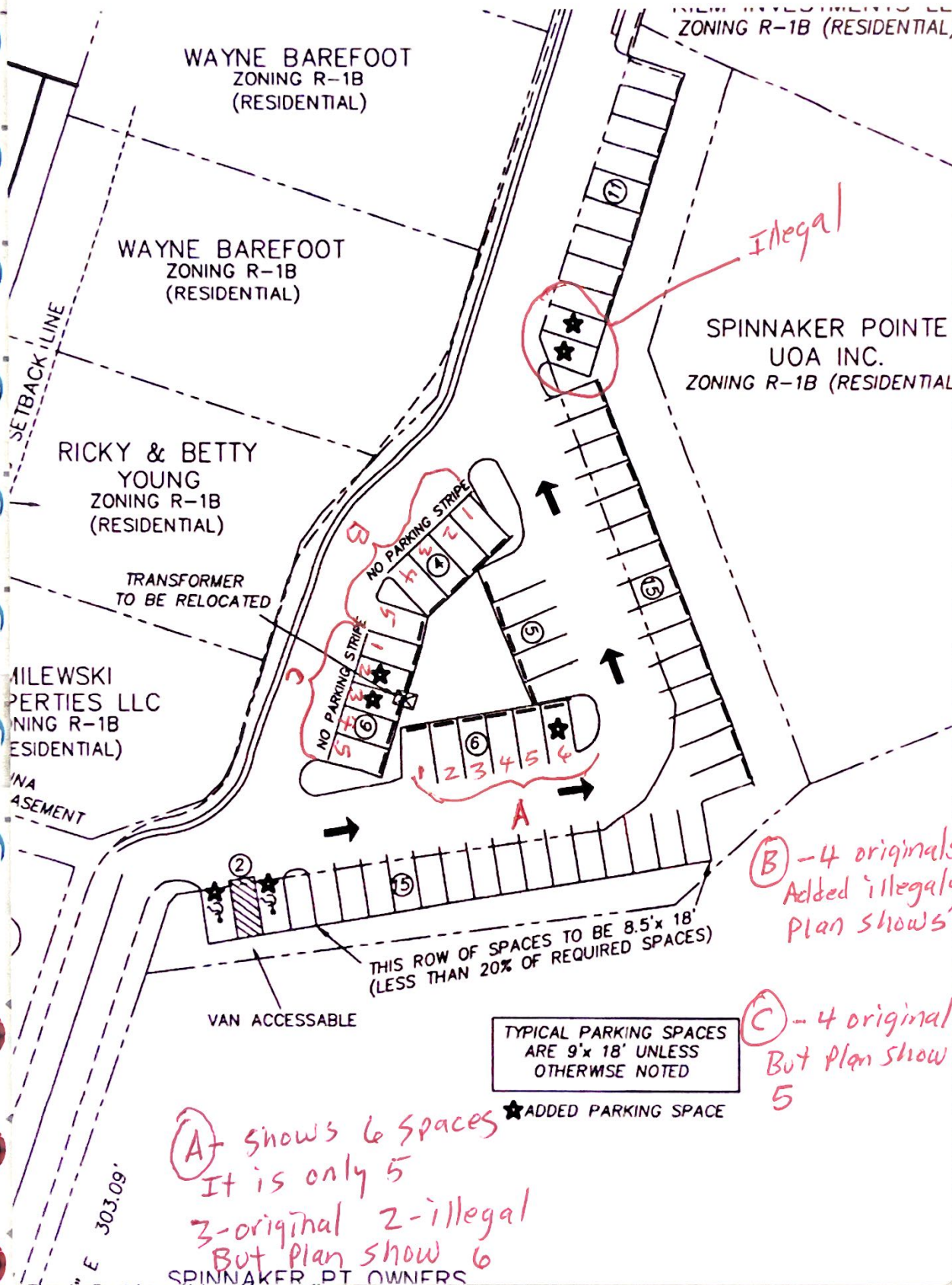


Hoa M...

site plan.pdf

9/28/23

Item 1.



*Illegal*

*(B) - 4 originals + one Added illegally Plan shows 5*

*(C) - 4 originals But plan shows 5*

*(A) shows 6 spaces It is only 5  
3-original 2-illegal  
But plan show 6*

TYPICAL PARKING SPACES ARE 9' x 18' UNLESS OTHERWISE NOTED

★ ADDED PARKING SPACE

THIS ROW OF SPACES TO BE 8.5' x 18' (LESS THAN 20% OF REQUIRED SPACES)

VAN ACCESSIBLE

TRANSFORMER TO BE RELOCATED

SETBACK LINE

INAASEMENT

MILEWSKI PERTIES LLC ZONING R-1B (RESIDENTIAL)

RICKY & BETTY YOUNG ZONING R-1B (RESIDENTIAL)

WAYNE BAREFOOT ZONING R-1B (RESIDENTIAL)

WAYNE BAREFOOT ZONING R-1B (RESIDENTIAL)

ZONING R-1B (RESIDENTIAL)

SPINNAKER POINTE UOA INC. ZONING R-1B (RESIDENTIAL)

SPINNAKER PT. OWNERS



original

Added

Added

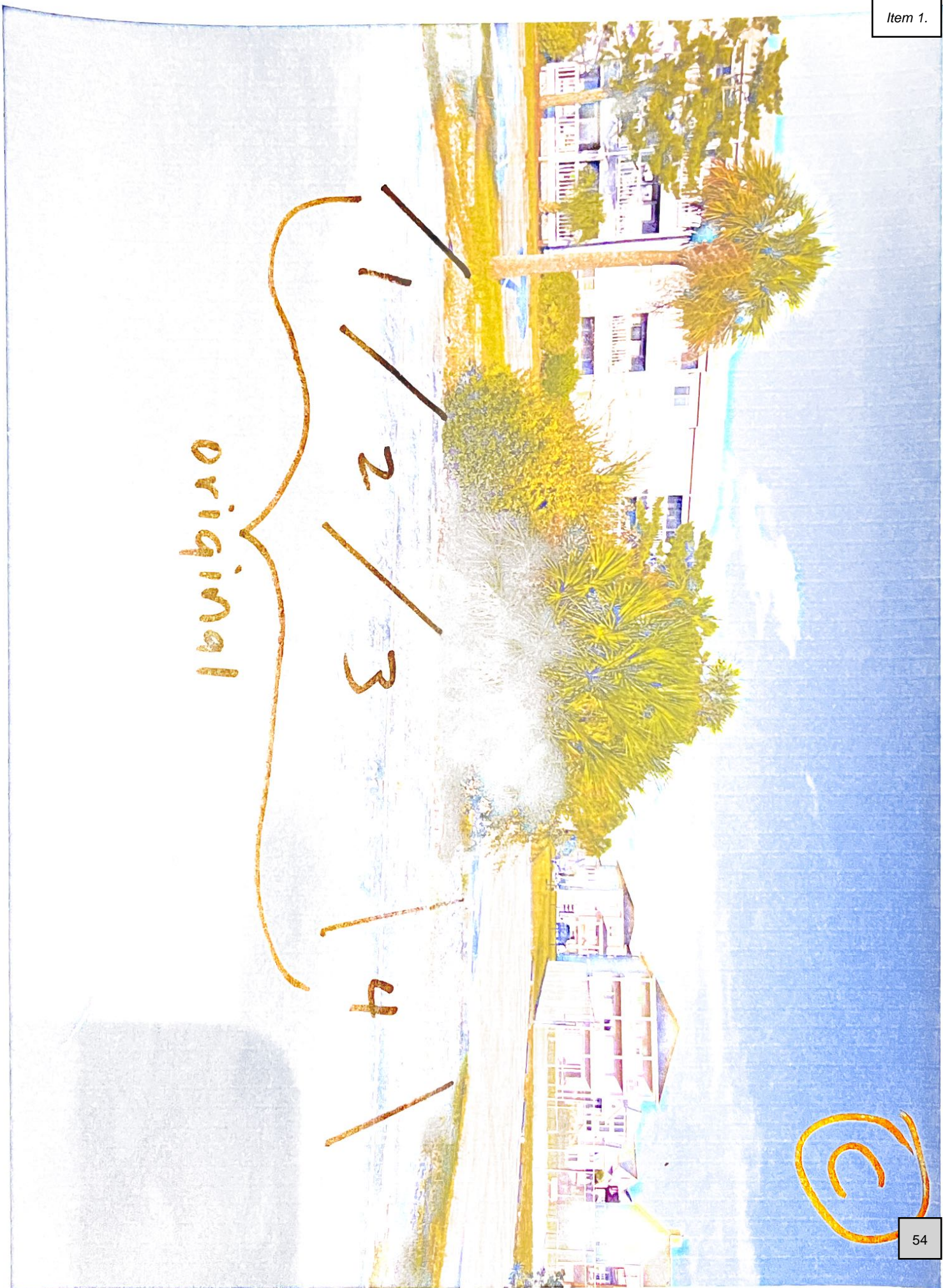
A

B

Original

Added





original

1

2

3

4

@

Lynn Barbee  
Mayor

Joe Benson  
Council Member

Deb LeCompte  
Council Member



Jay Item 1.  
Mayor Pro Tem

Mike Hoffer  
Council Member

Bruce Oakley  
Town Manager

**Town of Carolina Beach**  
1121 N. Lake Park Blvd.  
Carolina Beach, NC 28428  
Tel: (910) 458-2999  
Fax: (910) 458-2997

Olin Furr  
440 Oceana Way  
Carolina Beach NC 28428

Dear Mr. Furr,

I am in receipt of your violation complaint dated October 6, 2023. As I understand your complaint, you do not think that the number of spaces in a non-conforming parking lot facility can be increased. The purpose of this letter is to provide my determination on whether a non-conforming parking lot facility can increase the number of parking spaces.

Your complaint is in reference to the non-conforming parking lot with the address of 401 Marina St (PIN 3131-74-1321.000), located within the Oceana neighborhood. The operator of the Carolina Beach Yacht Club Marina relocated three parking spaces to the referenced parking lot above. Two of the parking spaces were originally located within the parking lot facility and moved within the same facility due to the location of a transformer. Another space was moved from the Marina building parking lot due to an encroachment of a wall from an adjacent property. This increased the total number of spaces from 56 to 57 parking spaces in the non-conforming parking lot.

ARTICLE XIV. - Nonconforming Situations, Sec. 40-425. - Extension or enlargement of nonconforming situations, including land uses and buildings states that "no increase in the extent of nonconformity, except as specifically provided in this section, it shall be unlawful for any person to engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation". The section further states that "the Increase in volume, intensity, or frequency of nonconforming use may be allowed. The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased and the equipment or processes used at a location where a nonconforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind".

Based on Article XIV Sec. 40-425 staff's determination is that the extent of the facility has not increased in size just the volume of the number of parking spaces within the boundary of the facility. It is my determination that the non-conforming parking lot at issue is allowed to increase the number of parking spaces. If you believe my determination is in error and would like to appeal [it](#), please find the attached appeal form. Below is the ordinance language for reference.

#### **ARTICLE XIV. - NONCONFORMING SITUATIONS**

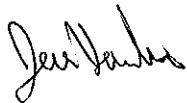
##### **Sec. 40-425. Extension or enlargement of nonconforming situations, including land uses and buildings.**

- (a) *No increase in the extent of nonconformity.* Except as specifically provided in this section, it shall be unlawful for any person to engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation.
- (b) *Nonconformity may extend throughout a completed building.* Subject to subsection (e) of this section, a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this article, was manifestly designed or arranged to accommodate such use. A nonconforming use may not be extended to additional buildings or to land outside the original building.

- (c) *Physical alteration or addition of new structures.* Physical alteration of structures or the placement of new structures on land are unlawful if they result in:
- (1) An increase in the total amount of space devoted to a nonconforming use;
  - (2) Greater nonconformity with respect to dimensional restrictions such as yard requirements, height limitations; or
  - (3) The enclosure of previously unenclosed areas, even though those areas were previously used in connection with the nonconforming activity. An area is unenclosed unless at least 75 percent of the perimeter of the area is marked by a permanently constructed wall or fence.
- (d) *Nonconformity may not be increased to cover more land.* A nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming.
- (e) *Increase in volume, intensity, or frequency of nonconforming use may be allowed.* The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased and the equipment or processes used at a location where a nonconforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and in no violations of other subsections.
- (f) *Repairs and maintenance are encouraged.* Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted and encouraged.

Please be advised that any appeal of my determination must be filed by 11/19/23.

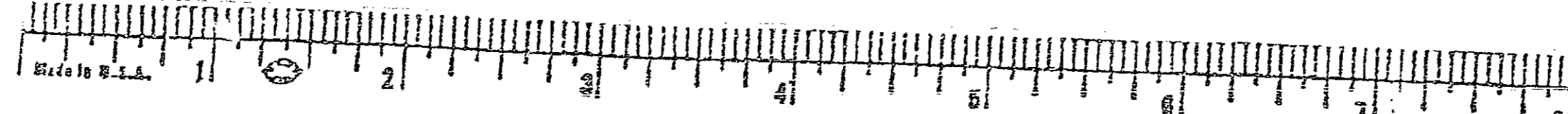
Sincerely,



Jeremy Hardison

Planning & Development Director





STATE OF NORTH CAROLINA NEW HANOVER COUNTY

I, Robert H. Goslee, certify that this plat was drawn under my supervision from an actual survey made under my supervision from information found in the New Hanover Co. Registry, as noted hereon, that the error of closure as calculated by latitudes and departures is 1/100000th of the perimeter of the area shown as broken lines, that this map was prepared in accordance with G.S. 47-30 as amended. Witness my hand and seal this 28th day of September, 1994.

Robert H. Goslee  
Registered Land Surveyor  
N.C. Registration # 1189

STATE OF NORTH CAROLINA NEW HANOVER COUNTY

I, Manley D. Carr, a Notary Public for said County and State, do hereby certify that Robert H. Goslee, a registered land surveyor, personally appeared before me this day and acknowledged the foregoing instrument. Witness my hand and official seal on this 28th day of September, 1994.

Manley D. Carr  
Notary Public  
My Commission Expires December 30, 1997

CERTIFICATE OF OWNERSHIP AND DEDICATION

I hereby certify that I am the owner of the property shown and described hereon and that I adopt this plan of subdivision with my free consent, establish minimum building setback lines, and dedicate all streets, alleys, walks, parks, and other sites and easements to public use as noted. Furthermore, I dedicate all public sewer lines and all water lines to the Town of Carolina Beach, if applicable.

9/28/94  
Date  
Owner

CERTIFICATE OF WATER SUPPLY AND SEWAGE DISPOSAL SYSTEMS

I hereby certify that the water supply and sewage systems installed, or proposed for installation, fully meet the requirements of the Town of Carolina Beach and applicable agencies of the State of North Carolina.

9/28/94  
Date  
Owner

I, ROBERT H. GOSLEE, A REGISTERED LAND SURVEYOR, CERTIFY THAT THIS PLAT IS OF A SURVEY THAT CREATES A SUBDIVISION OF LAND WITHIN THE AREA OF A COUNTY OR MUNICIPALITY THAT HAS AN ORDINANCE THAT REGULATES PARCELS OF LAND.

Robert H. Goslee  
ROBERT H. GOSLEE, R.L.S. L-1189

STATE OF NORTH CAROLINA NEW HANOVER COUNTY

The foregoing certificates of Manley D. Carr, a Notary Public of New Hanover County, is certified to be correct. This the 28th day of September, 1994.

MARY SUE OOTS

Phyllis Lynn Oots  
By: Phyllis Lynn Oots

STATE OF NORTH CAROLINA NEW HANOVER COUNTY  
Filed for registration on the 28th day of September, 1994, at 2:33 P.M. (P.S.) and duly recorded in Map Book 34, at Page 143.

MARY SUE OOTS

Phyllis Lynn Oots  
By: Phyllis Lynn Oots

STATEMENT OF THE DESIGN AND INSTALLATION OF STREETS  
I hereby certify that all streets shall be installed in an acceptable manner and according to the specifications and standards of the Town of Carolina Beach.

9/28/94  
Date  
Owner

CERTIFICATE OF APPROVAL OF THE DESIGN AND INSTALLATION OF STREETS, UTILITIES, AND OTHER REQUIRED IMPROVEMENTS.

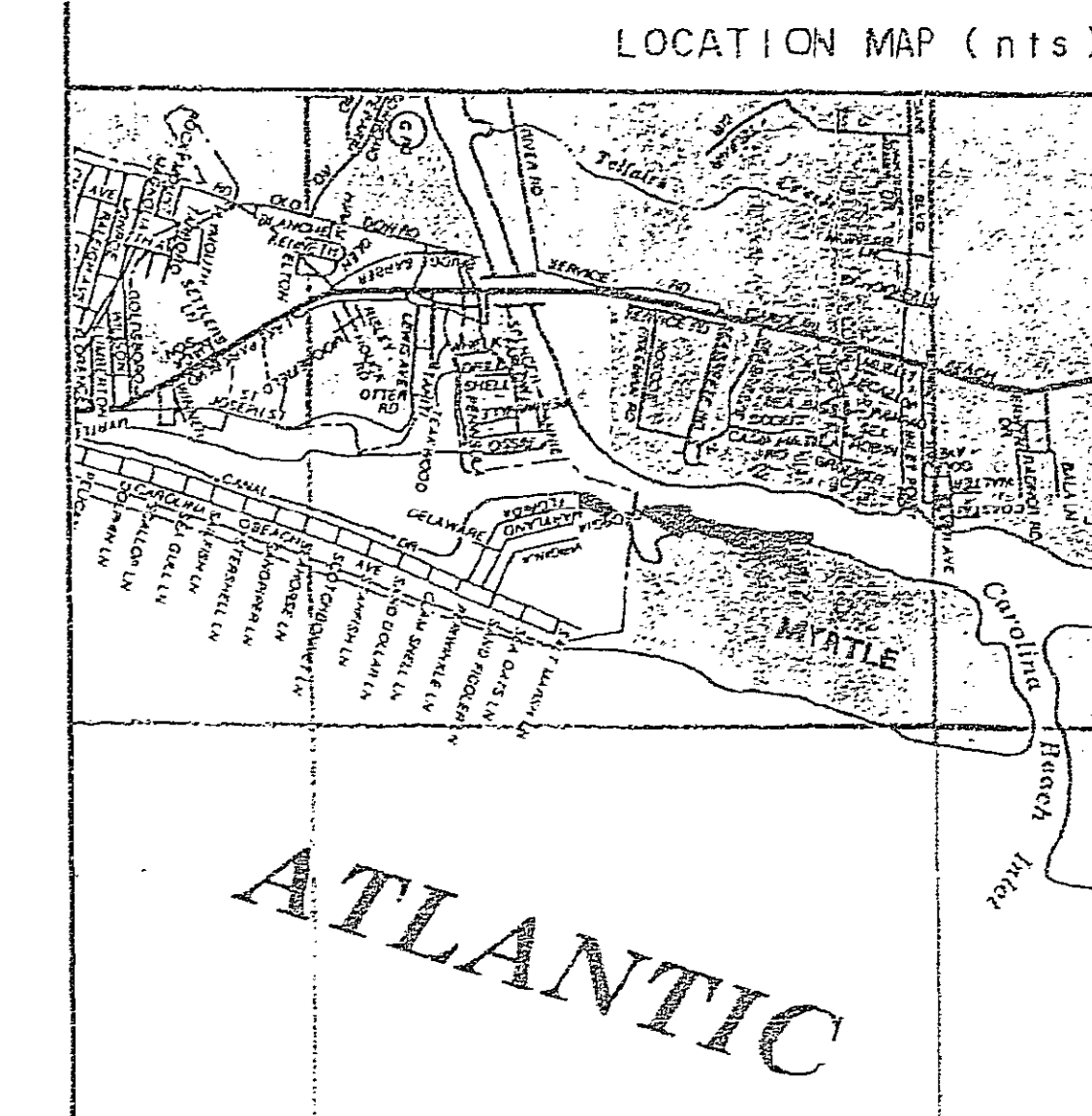
I hereby certify that all streets, utilities, and other improvements have been installed in an acceptable manner and according to town specifications and standards in the OCEANA subdivision or that a guarantee of the installation of the required improvements in an amount and manner satisfactory to the Town of Carolina Beach has been received.

9-28-94  
Date  
Lawrence J. Lindsey  
City Manager

CERTIFICATE OF APPROVAL BY THE PLANNING AND ZONING COMMISSION.  
The Carolina Beach Planning and Zoning Commission hereby approves the Final Plat for the OCEANA subdivision.

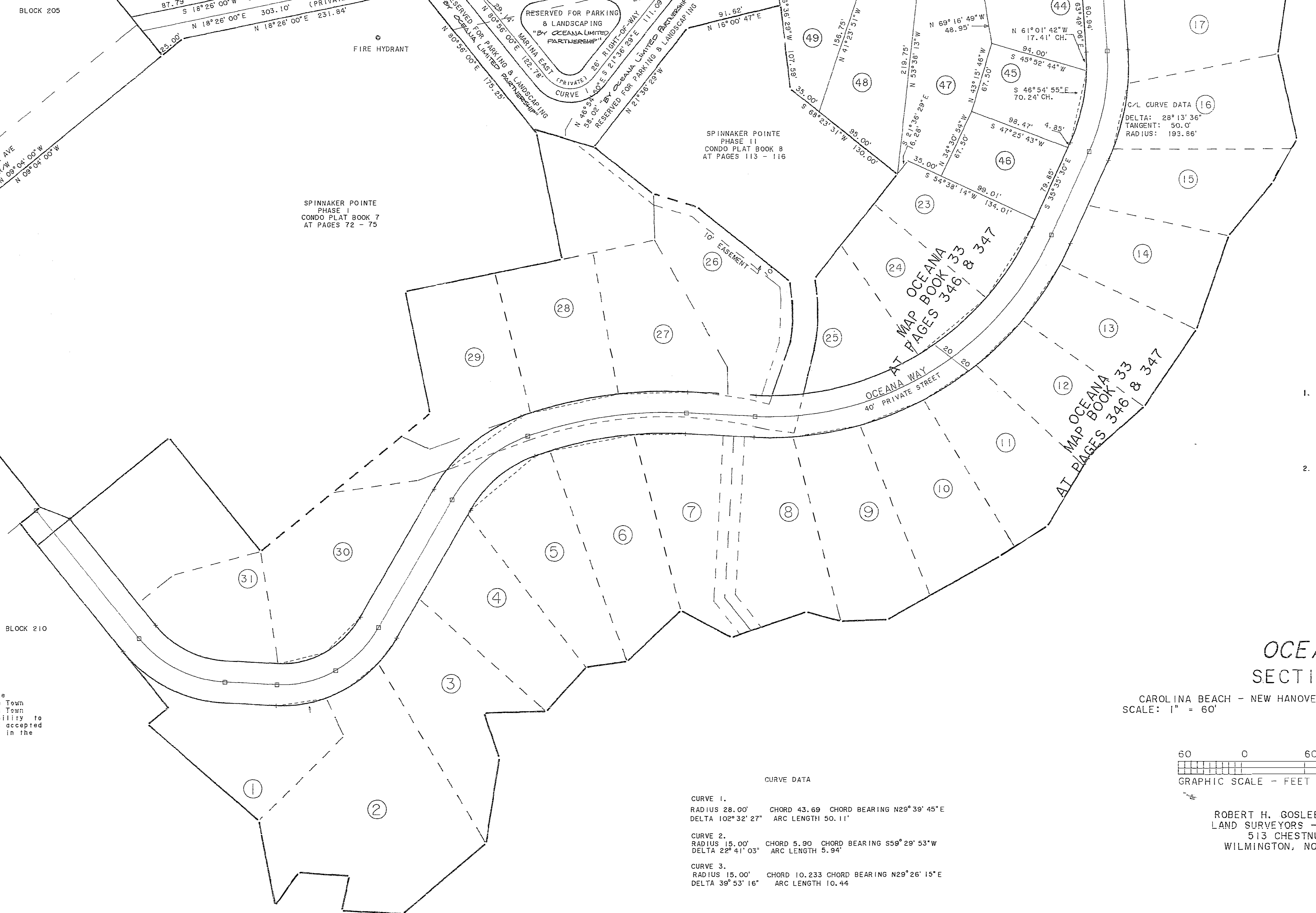
9/28/94  
Date  
Charles R. Humeau  
Chairman

Attachment 5



BLOCK 205

BLOCK 210



143

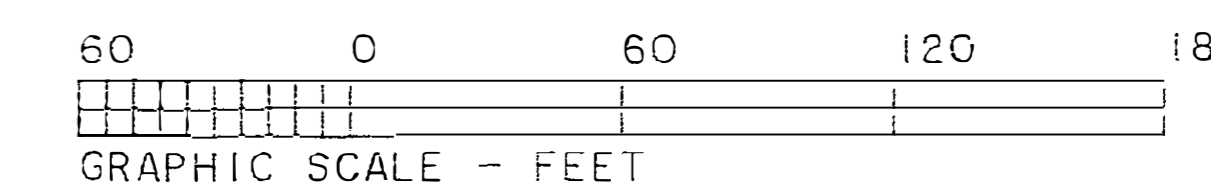
NOTE:

- ALL STREETS AND OTHER COMMON AREA SHALL BE MAINTAINED BY A LEGALLY FORMED HOMEOWNERS ASSOCIATION.  
-RECORDED IN BOOK 227 PAGE 1756 NEW HANOVER COUNTY REGISTRY
- LOT CORNERS OF LOTS THAT FRONT ON THE MARINA ARE SET 10.0' BACK FROM CORNER ON 10.0' EASEMENT LINE.

000116

OCEANA SECTION 2

CAROLINA BEACH - NEW HANOVER COUNTY - NORTH CAROLINA  
SCALE: 1" = 60' SEPTEMBER 8, 1994



ROBERT H. GOSLEE & ASSOCIATES  
LAND SURVEYORS - LAND PLANNERS  
513 CHESTNUT STREET  
WILMINGTON, NORTH CAROLINA

CURVE DATA

CURVE 1.	RADIUS 28.00'	CHORD 43.69	CHORD BEARING N29°39'45"E
	DELTA 102°32'27"	ARC LENGTH 50.11'	
CURVE 2.	RADIUS 15.00'	CHORD 5.90	CHORD BEARING S59°23'53"W
	DELTA 22°41'03"	ARC LENGTH 9.94'	
CURVE 3.	RADIUS 15.00'	CHORD 10.233	CHORD BEARING N29°26'15"E
	DELTA 39°53'16"	ARC LENGTH 10.44'	

RECORDED BY: [Signature]

Map Book 34 Page 143

DEVELOPER:  
OCEANA LTD.  
401 VIRGINIA AVE.  
CAROLINA BEACH, N.C. 28428

SURVEYOR:  
ROBERT H. GOSLEE & ASSOCIATES  
513 CHESTNUT STREET  
WILMINGTON, N.C. 28401



54 SEP 28 PM 2 38  
REC'D BY: [Signature]  
NEW HANOVER CO. INC.



(“Registry”), CBYC owns the real property located at 401 Marina Street in New Hanover County, North Carolina (“Property”).

3. On or about 25 September 2019, CBYC applied to the Town for a conditional use permit (hereinafter “Permit”) for certain limited improvements to its Property.

4. CBYC’s Property consists of an existing commercial marina including fuel docks, a ship store, an office, residential unit, parking, and related facilities which have been in place for more than 20 continuous years preceding CBYC’s Permit application (collectively, “Marina”).

5. CBYC’s Permit application seeks to (i) extend and widen its existing fuel dock; (ii) add and relocate its fuel pumps; (iii) place a barge adjacent to CBYC’s existing dock, where the existing office and ship store will be relocated; (iv) add thirteen (13) parking spaces, a designated loading zone, and two (2) ADA compliant parking spaces within the Property’s existing boundary; and, (v) add an outdoor eating establishment to serve hot food and drinks to the Marina’s patrons.

6. The 2007 Town of Carolina Beach CAMA Land Use Plan sets forth the Town’s desire to encourage “low intensity water-oriented restaurant or other low intensity water-oriented commercial services with public docking and water access.”

7. The Town’s existing Code of Ordinances permits restaurants, bars, eateries, retail sales, office space, and other marina related uses in the MB-1 zoning district in which CBYC’s Property is located.

8. The Town’s Ordinances require an applicant for a conditional use permit to meet seven (7) specific and four (4) general standards before being approved. *Carolina Beach, N.C. Code of Ordinances*, § 40-327(c) and (d).

9. The Town's Ordinances also set forth standards for particular uses such as eating and/or drinking establishments, which are specifically permissive uses within the Property's MB-1 zoning district. *Id.* § 40-261.

10. On 14 January 2020, a quasi-judicial hearing was held on CBYC's application for its Permit.

11. At the hearing, CBYC and Oceana presented evidence concerning the seven (7) specific and four (4) general standards before being approved. *Carolina Beach, N.C. Code of Ordinances*, § 40-327(c) and (d).

12. On 30 March 2020, the Town issued its written Order denying CBYC's Permit application based on the 2-2 tied vote of the Town's Council's vote.

13. On 29 April 2020, CBYC timely and properly filed its Petition for Writ of Certiorari to this Court seeking to appeal the Town's Order denying its Permit application.

14. On 29 April 2020, CBYC's Petition for Writ of Certiorari was granted; the Town submitted the record for the appeal; and this Court was scheduled to conduct the appellate hearing on CBYC's appeal on 23 September 2020.

15. On 29 May 2020, Oceana filed its Verified Motion to Intervene of Oceana Owners Association, Inc., and its proposed Response of Intervenor-Respondent Oceana Owners Association, Inc (collectively, "Intervention Motion").

16. On September 15, 2020, Oceana filed an Objection to Notice of Hearing and Motion to Continue the noticed appeal hearing. Thereafter, counsel for CBYC informed counsel for Oceana that CBYC would consent to Oceana's Intervention Motion to keep the noticed date for the appeal hearing.

17. Ultimately, the hearing on CBYC's appeal was canceled based upon the parties' agreement and resolution of the matters between them.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the parties and this Court agree to the following Conclusions of Law:

1. This Court has jurisdiction over the parties and the subject matter of this proceeding.
2. Oceana's Intervention Motion is hereby granted, thus binding Oceana to the rights and obligations of this Consent Order.
3. Conditional use permits are issued for uses that an ordinance expressly permits in a designated zone. *Humble Oil & Refining Co. v. Bd. of Aldermen*, 284 N.C. 458, 467, 202 S.E.2d 129, 136 (1974).
4. To effectuate the parties' settlement and the entry of this Consent Order, the parties agree that CBYC produced competent, material, and substantial evidence establishing that CBYC's Permit application met all relevant standards, specifications, and requirements set forth under the Town's Ordinances for issuance of a conditional use permit.

Based upon the foregoing, including the consent and request of the parties, and upon a review of the terms herein, the Court believes that the entry of this Consent Order is fair, in the interests of justice, and should be entered.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

1. CBYC's application for a Permit shall be and the same is hereby GRANTED upon the following conditions/restrictions:

- a. All of the terms and provisions contained in CBYC's Permit Application, except as may be expressly modified hereinbelow and said modifications shall supplement and amend CBYC's Permit Application.
  - b. CBYC shall fully comply with all Town, New Hanover County, State, and/or Federal rules and regulations, including the departments and agencies of each such entity.
  - c. CBYC shall not play music, whether recorded or live, before 12:00 p.m. each day, will stop playing any such music one (1) hour before closing time each day, and will at all times comply with the Town's noise ordinance.
  - d. CBYC's store, restaurant, fueling and other sales and activities shall cease by 9:00 p.m. beginning on the Friday of Memorial Day weekend of each calendar year through and including the Labor Day holiday of each calendar year. At all other times (i.e., the off-season), said activities shall cease by 7:00 p.m.
  - e. CBYC's restaurant operations will open on a daily basis no earlier than 7 a.m.
  - f. Any newly installed lighting within CBYC's Marina shall be directed downward and away from the residential homes in the Oceana Subdivision.
  - g. CBYC will ensure that trash is picked-up on a daily basis within all areas of its operation, including along its walkways along the Marina and also within the parking lot and spaces owned by CBYC within the Oceana Subdivision.
  - h. Any future conditional or special use permit application by CBYC requesting additional uses of the Property not contemplated in the current Permit may be contested by Oceana notwithstanding this Consent Order. Alternatively, Oceana may choose to require the same restrictions specified herein to be imposed on the use proposed by any such future conditional or special use permit application.
2. Nothing herein shall be construed so as to waive, limit or otherwise prejudice CBYC and its successors and assigns from seeking additional uses and/or improvements to its subject property and marina as may be allowed by the Town's ordinances. Nothing herein shall be construed so as to waive, limit or otherwise prejudice the legal and/or factual arguments of any opponents possessing legal standing to any future applications by CBYC and/or its successors and assigns to make any additional uses and/or improvements to its subject property.

- 3. The terms and provisions of this Order shall be fully enforceable by the Court with all of its authority including, without limitation, the Court's powers of contempt, including an award of attorney's fees for any prevailing party.
- 4. Each party shall bear its own respective costs and attorneys' fees, except in any proceedings under Paragraph 3.
- 5. The provisions of this Consent Order shall be binding upon and inure to the benefit of the parties' respective successors and assigns.

So ORDERED this the 21<sup>st</sup> day of December 2020.

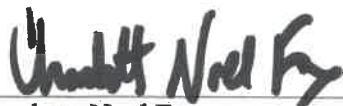


THE HONORABLE George F. Jones  
Resident Superior Court Judge Presiding  
New Hanover County, North Carolina

WE CONSENT:



G. Grady Richardson, Jr.  
Counsel for Petitioner, CBYC, LLC



Charlotte Noel Fox  
Counsel for Respondent Town of Carolina Beach



C. Wes Hodges, II  
Counsel for Intervenor-Respondent,  
Oceana Owners Association, Inc.

# Attachment 7

**MC<sup>2</sup> ENGINEERING**  
 MC<sup>2</sup> ENGINEERING, INC.  
 2110 BEN CRAIG DR., STE. 400  
 CHARLOTTE, NC 28262  
 PHONE 704.510.1979



THE DESIGNS AND DRAWINGS SHOWN ARE THE PROPERTY OF MC<sup>2</sup> ENGINEERING, INC. REPRODUCTION OR USE FOR ANY PURPOSE OTHER THAN THAT AUTHORIZED BY MC<sup>2</sup> ENGINEERING, INC. IS PROHIBITED.

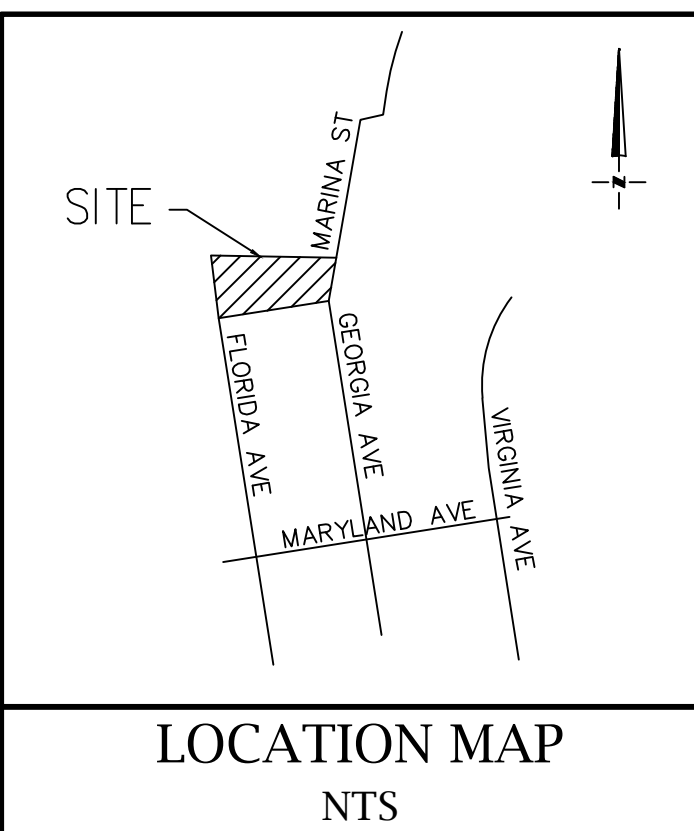
**CAROLINA BEACH MARINA AND YACHT CLUB**  
 401 MARINA STREET  
 CAROLINA BEACH, NC

## SKETCH PLAN

REVISIONS	
1	9/25/2018 CAROLINA BEACH REVISIONS
2	9/27/2018 CAROLINA BEACH REVISIONS
3	10/17/2018 CAROLINA BEACH REVISIONS
4	11/2/2018 CAROLINA BEACH REVISIONS
5	11/8/2018 CAROLINA BEACH REVISIONS
6	11/20/2018 CAROLINA BEACH REVISIONS
7	12/4/2018 CAROLINA BEACH REVISIONS
8	12/7/2018 CAROLINA BEACH REVISIONS
9	3/5/2019 CAROLINA BEACH REVISIONS
10	9/22/2019 CAROLINA BEACH REVISIONS

CAD FILE: 18-026 BASE.DWG  
 PROJECT NO.: 18-026  
 DESIGNED BY: TAP  
 REVIEWED BY: JDM  
 DATE: AUGUST 31, 2018

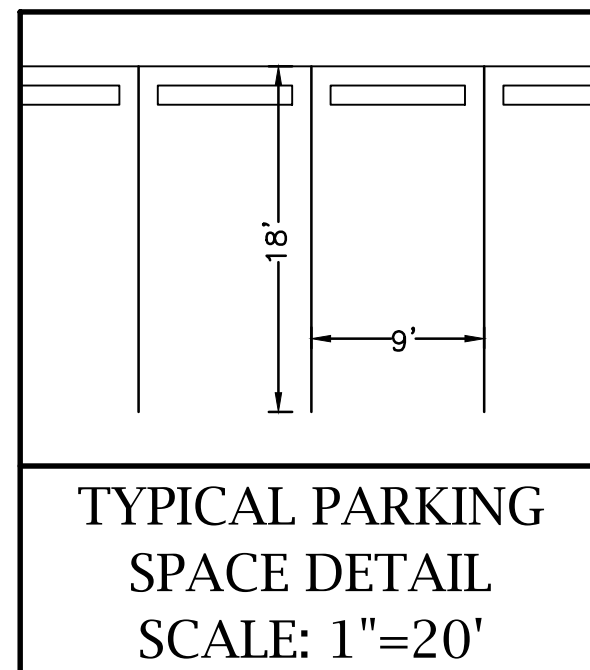
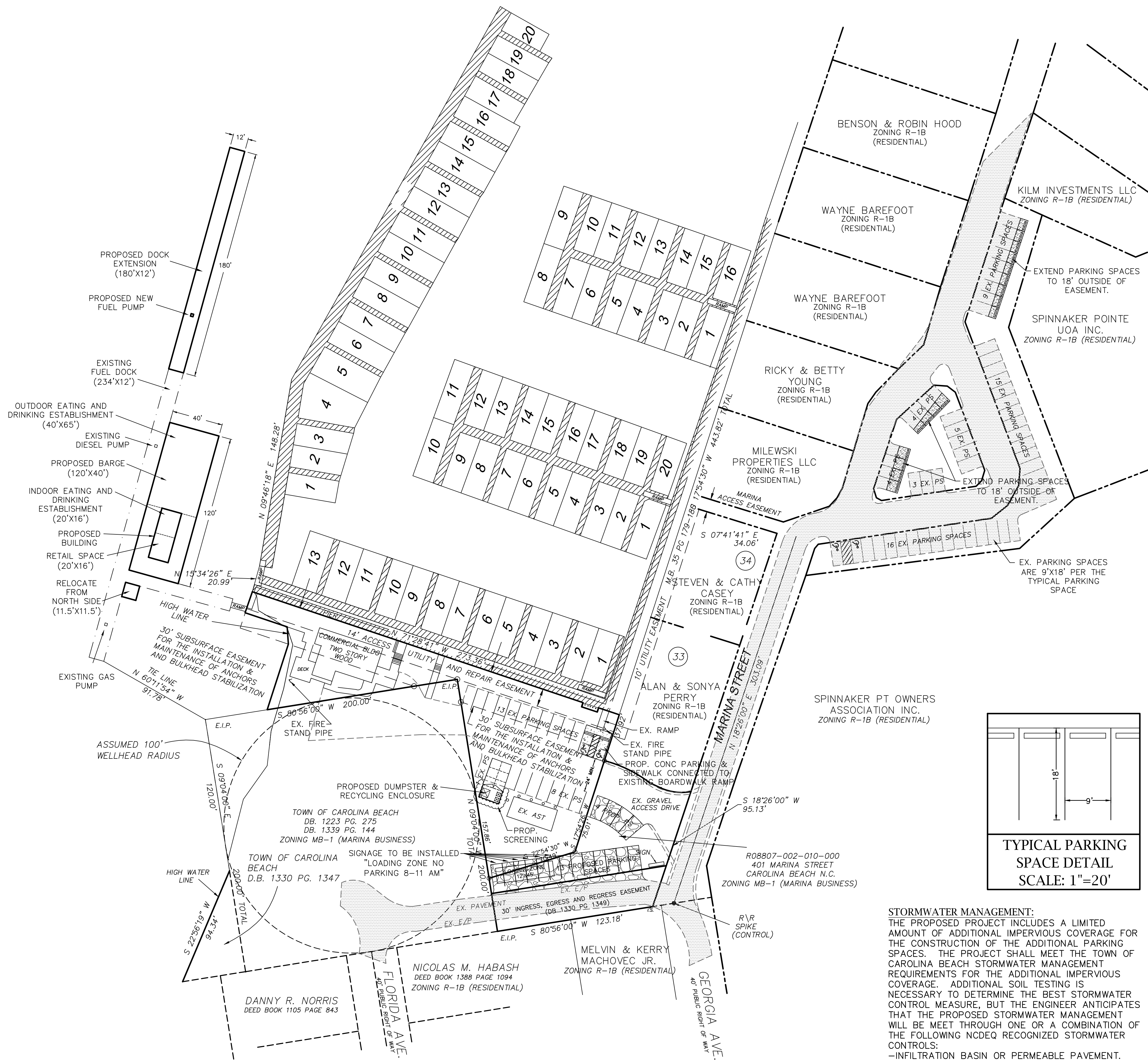
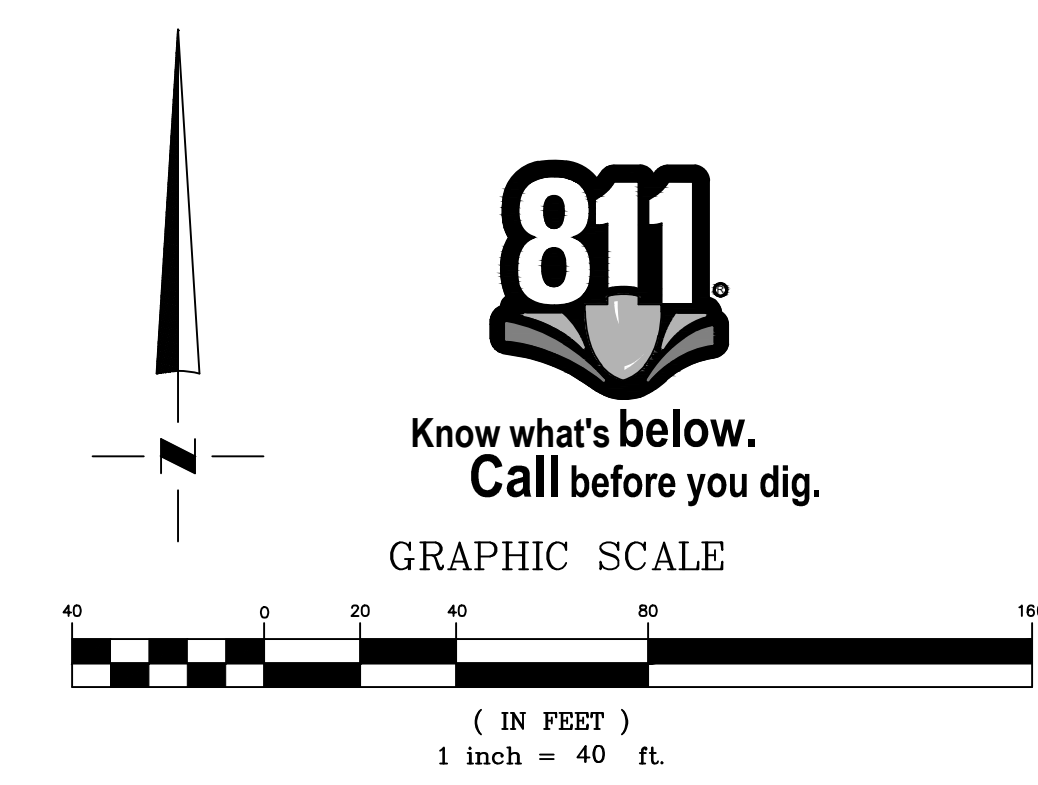
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PROPERTY OWNER PER GIS:	
JOYNER MARINA LLC	RALEIGH, NC 27602
<b>SITE AREA:</b>	
±1.36 AC (±59,237 SF)	
0.53 AC (±23,087 SF)	
0.24 AC (±10,450 SF)	
0.59 AC (±25,700 SF)	
<b>PARCEL IDS:</b>	
R08519-002-028,	
R08807-002-010,	
R08519-002-002	
<b>JURISDICTION:</b> TOWN OF CAROLINA BEACH	
<b>CURRENT ZONING:</b> MB-1-MARINA	
<b>PARKING CALCULATIONS</b>	
REQUIRED OFF-STREET PARKING:	94 (93.2)
<b>BOAT SLIP</b>	
-1 SPACE PER WET SLIP	69
<b>RETAIL (BARGE)</b>	
-1 SPACE PER 200 SF	1.6
-1/2 OF STRUCTURE (16' X 20')=320 SF	
<b>EATING &amp; DRINKING ESTABLISHMENTS (BARGE)</b>	
-1 SPACE PER 110 SF (INDOOR)	2.9
-1/2 OF STRUCTURE (16' X 20')=320 SF	
-1 SPACE PER 220 SF (OUTDOOR)	11.8
-(40'X65')=2,600 SF	
<b>RESIDENTIAL ABOVE EXISTING COMMERCIAL</b>	
-1 SPACE PER 1,000 SF	1.2
-1,200 SF APARTMENT	
<b>OFFICE (EXISTING COMMERCIAL BUILDING 1ST FLOOR)</b>	
-1 SPACE PER 300 SF	2
-600 SF	
<b>RETAIL (EXISTING COMMERCIAL BUILDING 1ST FLOOR)</b>	
-1 SPACE PER 200 SF	4.7
-933 SF	
<b>EXISTING OFF-STREET PARKING:</b> 79	
PROPOSED OFF-STREET PARKING:	16
TOTAL OFF-STREET PARKING:	95
<b>LOT COVERAGE</b>	
EXISTING BUILDING/FUEL TANK:	2,144 SF
EXISTING CONCRETE/ASPHALT/GRAVEL:	25,640 SF
TOTAL EXISTING IMPERVIOUS:	27,784 SF
PROPOSED GRAVEL:	1,975 SF
TOTAL PROPOSED IMPERVIOUS AREA:	29,759 SF
<b>LOADING SPACE REQUIREMENTS</b>	
LESS THAN 15,000 SF (MUST SUBMIT A LOADING PLAN)	
-PROPOSED OFFICE, RETAIL AND RESTAURANT USE IS A TOTAL OF 4,973 SF. THE ANTICIPATED DELIVERIES FOR THE OFFICE AND RETAIL SPACE CONSIST OF TYPICAL DELIVERIES FROM UPS/FEDEX. THE RESTAURANT DELIVERIES WILL BE SCHEDULED TO OCCUR BETWEEN 8-11 AM SO AS TO OCCUR PRIOR TO THE NORMAL BUSINESS OPERATING HOURS AND THEREFORE TO NOT IMPACT THE PARKING LOT CAPACITY. SIGNAGE TO BE INSTALLED AS NOTED. THE ANTICIPATED LOADING PERIOD WOULD BE ANTICIPATED TO NOT LAST LONGER THAN 1 HOUR. THE TYPICAL TRUCK FOR DELIVERIES TO THE RESTAURANT WOULD BE A WB-40 WHICH IS A TRACTOR TRAILER WITH A OVERALL LENGTH OF 45 FEET.	

## DEVELOPMENT SUMMARY

**PROJECT DESCRIPTION:**  
 PROJECT INCLUDES PROPOSED DOCK EXTENSION WITH NEW FUEL PUMP AND NEW BARGE WITH BUILDING TO HOUSE SMALL RETAIL AREA AND EATING AND DRINKING ESTABLISHMENT.

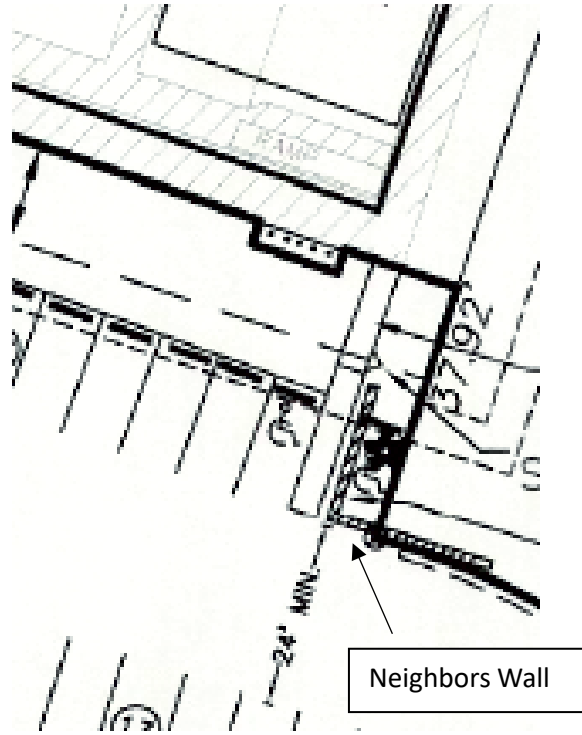


**STORMWATER MANAGEMENT:**  
 THE PROPOSED PROJECT INCLUDES A LIMITED AMOUNT OF ADDITIONAL IMPERVIOUS COVERAGE FOR THE CONSTRUCTION OF THE ADDITIONAL PARKING SPACES. THE PROJECT SHALL MEET THE TOWN OF CAROLINA BEACH STORMWATER MANAGEMENT REQUIREMENTS FOR THE ADDITIONAL IMPERVIOUS COVERAGE. ADDITIONAL SOIL TESTING IS NECESSARY TO DETERMINE THE BEST STORMWATER CONTROL MEASURE, BUT THE ENGINEER ANTICIPATES THAT THE PROPOSED STORMWATER MANAGEMENT WILL BE MET THROUGH ONE OR A COMBINATION OF THE FOLLOWING NCDEQ RECOGNIZED STORMWATER CONTROLS:  
 -INFILTRATION BASIN OR PERMEABLE PAVEMENT.



Encroachments

Wall



Transformer

