

# CAROLINA BEACH

Town Council Regular Meeting

Tuesday, April 09, 2024 – 6:00 PM

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



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## AGENDA

### CALL TO ORDER

### INVOCATION AND PLEDGE OF ALLEGIANCE

### ADOPT THE AGENDA

### CONSENT AGENDA

- [1.](#) Set a public hearing for May 14, 2024, to consider a Special Use Permit Modification for additional boat storage spaces located at 401 Marina Street PID 313115.74.1321.000, 313115.64.9002 & 313115.64.8036 in the Marina Business MB-1 & R-1B District. Applicant: CBYC, LLC
- [2.](#) Notice of Committee Member Expiration Dates
- [3.](#) ROT Funding Reimbursement Approval Request
- [4.](#) Budget Amendments/Transfers
- [5.](#) Approval of Council Meeting Minutes

### SPECIAL PRESENTATIONS

- [6.](#) Events Update by Tim Murphy
- [7.](#) Proclamation for Safe Boating Week – May 18-24, 2024
- [8.](#) Manager's Update

### PUBLIC COMMENT

*Public Comment allows the public the opportunity to address Town Council. Please direct your comments to Council only. Speakers should restrict comments to no more than three minutes. Items or questions presented during this time will not be discussed by Council. However, the topic may be deferred to Town staff or a Town committee for follow-up. Please be sure to state your name and address, and speak directly into the microphone for those watching online.*

### PUBLIC HEARINGS

- [9.](#) Public Hearing to Receive Public Input on the 2024/2025 Budget
- [10.](#) Zoning Map Amendment to consider a request to rezone 204 Harper Avenue from Mixed Use (MX) to Central Business District (CBD). Applicant: STLNC, LLC
- [11.](#) Text Amendments to amend Chapter 40:
  - Sec. 40-73. - Dimensional standards for the various zoning districts,
  - Sec. 40-74. Dimensional standards for lots and principal structures, and
  - Sec. 40-426. - Reconstruction, maintenance, full or partial demolition and renovation of nonconforming situations.Applicant: North Pier Holdings, LLC.
- [12.](#) Text Amendment to Chapter 40 Art. III. Zoning District Regulations, Art. V. Off-street Parking and Loading Requirements; Parking, and Art. IX. Development Standards for Particular Uses to amend standards for Wine and Beer Shops. Applicant: Neapolitan Enterprises, Inc.

**ITEMS OF BUSINESS**

- [13.](#) Proclamation to Recognize April 26, 2024 as National Arbor Day
- [14.](#) Discussion of an Encroachment Agreement for R09006-005-003-000

**COUNCIL COMMENTS**

**CLOSED SESSION**

- [15.](#) Closed Session – Attorney/Client Privilege

**ADJOURNMENT**



## AGENDA ITEM COVERSHEET

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

**DEPARTMENT:** Planning

**MEETING:** Town Council April 9, 2024

**SUBJECT:** Set a public hearing for May 14, 2024, to consider a Special Use Permit Modification for additional boat storage spaces located at 401 Marina Street PID 313115.74.1321.000, 313115.64.9002 & 313115.64.8036 in the Marina Business MB-1 & R-1B District. Applicant: CBYC, LLC

Applicant: CBYC, LLC

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**BACKGROUND:**

**ACTION REQUESTED:**

Adopt the consent agenda.

**RECOMMENDED MOTION:**



## AGENDA ITEM COVERSHEET

**PREPARED BY:** Kim Ward

**DEPARTMENT:** Clerk

**MEETING:** Town Council 4/9/2024

**SUBJECT:** Notification of Expiring Committee Terms

### **BACKGROUND:**

The following committee members have a term expiration date of June 30, 2024. I will reach out to each committee chair to find out if their committee members would like to be considered for reappointment if they are eligible. Council will receive a ballot at the May 28, 2024 workshop to consider reappointing the current members or selecting a new applicant. No action needed. This is for preplanning purposes only.

<b>Member</b>	<b>Committee</b>	<b>Appointed</b>
Emily Harding	Beautification	3/10/2020
Jullena Jones Shelley	Beautification	3/10/2020
Linda Bottoms	Beautification	12/8/2020
Sarah Finn	Beautification	6/14/2022
Scott Pate	Beautification	8/10/2021
Rodney Kidd	Bike/Ped	9/13/2022
Yvonne Bailey	Bike/Ped	4/10/2018
David Marshal	BOA	5/23/2023
Jullena Shelley	BOA	11/12/2019
Paul Levy	BOA	11/12/2019
Jim Kitts	Marketing	1/14/2020
Lexi Pate	Marketing	8/10/2021
Butch LeCompte	Operations	8/10/2021
Bill Nadeau	Parks & Rec	7/9/2019
Jason Kesler	Parks & Rec	8/8/2017
Jessica Guinn	Parks & Rec	8/10/2021
Melanie Boswell	Planning and Zoning	6/12/2018
Lou Messina	Police Advocacy	11/13/2018
Lynn Conto	Police Advocacy	1/14/2020



## AGENDA ITEM COVERSHEET

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**PREPARED BY:** Sheila Nicholson

**DEPARTMENT:** Executive

**MEETING:** Town Council Meeting 4/9/2024

**SUBJECT:** ROT Funding Reimbursement Approval Request

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**BACKGROUND:**

The Town would like to submit a Room Occupancy Tax reimbursement request to the New Hanover TDA Board at their May 2024 meeting.

**ACTION:**

Approve under consent agenda.



## AGENDA ITEM COVERSHEET

**PREPARED BY:** Debbie Hall, Finance Director

**DEPARTMENT:** Finance

**MEETING:** Town Council – 4/9/2024

**SUBJECT:** Budget Amendments/Transfers

### **BACKGROUND:**

I have received several budget amendments and/or transfer requests. As you know, transfers require only your notification whereas amendments require your approval. Listed below you will find a description of the amendments and/or transfers. I have also attached a copy of the supporting documentation for the appropriations.

### **Appropriations:**

#### **Transfers:**

Transfer \$240 from account 10-420-033 Executive Supplies to account 10-420-023 Executive M&O Software to cover cost of Adobe Acrobat Pro for Duty Manager.

Transfer \$2,509 from account 10-420-090 Executive Contingency to account 10-410-005 Legislative FICA tax to cover line-item shortage.

Transfer \$18,075 from account 30-900-046 Stormwater Professional Services; \$15,000 to account 30-900-003 Stormwater Overtime Pay; \$1,147.50 to account 30-900-005 Stormwater FICA and \$1,927.50 to account 30-900-007 Stormwater Retirement to cover cost for the remainder of the fiscal year.

Transfer \$3,500 from account 30-812-045 Water Contract Services to account 30-800-045 W&S Admin Contract Services to cover work on water projects.

Transfer \$3,500 from account 30-800-014 W&S Admin Travel & Training to account 30-800-046 W&S Admin Professional Services to cover increase of Well 15H drawdown testing.

Transfer \$22,000 from account 30-812-045 Water Contract Services to account 30-812-026 Water M&O Materials to cover water equipment maintenance and repair.

Transfer \$12,010.83 from account 30-811-045 WWC Contract Services to account 30-811-074 WWC Capital Projects over \$10,000 to cover additional cost to replace lift station #5.

Transfer \$1,250 from account 30-810-045 WWTP Contract Services to account 30-810-011 WWTP Communications/Cell Phones to cover line-item shortage.

Transfer \$1,500 from account 30-810-045 WWTP Contract Services to account 30-810-032 WWTP Chemical & Lab Fees to cover line-item shortage.

Transfer \$21,690 from account 30-810-045 WWTP Contract Services; \$18,000 to account 30-810-003 WWTP Overtime; \$1,377 to account 30-810-005 WWTP FICA and \$2,313 to account 30-810-007 WWTP Retirement to cover overtime pay for the remainder of the fiscal year.

Transfer \$5,000 from account 30-813-021 W&S Fleet Tires to account 30-810-016 WWTP M&O Equipment to cover repairs and the treatment plant.

Transfer \$1,500 from account 30-810-045 WWTP Contract Services to account 30-810-032 WWTP Small Tools & Equipment line-item shortage.

Transfer \$19,311.90 from account 23-013-074 Revenue Bond Tradewinds Sewer Capital Project over \$10,000 and \$8,512.10 from account 23-002-046 Revenue Bond Phase C Professional Services to account 23-014-074 Revenue Bond WWTP Oxidation Ditch Capital Project over \$10,000 to complete the project.

**ACTION REQUESTED:**

Approve the budget amendments and/or transfers as presented by the Finance Director.

**Debbie Hall**

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**From:** Sheila Nicholson  
**Sent:** Tuesday, March 19, 2024 9:21 AM  
**To:** Debbie Hall  
**Cc:** Bruce Oakley  
**Subject:** Budget transfer request-Adobe Acrobat subscription for Ed Parvin

Debbie,  
Please transfer \$240 from 10-420-033 to 10-420-023 to cover the cost of an annual subscription for Adobe Acrobat Pro for Ed Parvin. Please let me know if you have any questions. Thanks!

*Sheila P. Nicholson*

Executive Assistant to the Town Manager  
Town of Carolina Beach  
[sheila.nicholson@carolinabeach.org](mailto:sheila.nicholson@carolinabeach.org)  
(910)458-2995

**DISCLAIMER:**  
E-mail correspondence to and from this address may be confidential and/or subject to the North Carolina Public Records Law and may be disclosed to third parties.



# Memorandum

**To:** Bruce Oakley  
**From:** Debbie Hall (Finance Department)  
**Date:** 3/28/2024  
**Re:** Budget Transfer

The following budget transfer is to cover Legislative FICA line-item shortage.

To Account	From Account	Amount
10-410-005 Legislative FICA tax	10-420-090 Executive Contingency	\$2,509.00

Regards,

Debbie Hall  
Finance Director

## Debbie Hall

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**From:** Brian Stanberry <brian.stanberry@carolinabeach.org>  
**Sent:** Friday, March 22, 2024 2:34 PM  
**To:** Debbie Hall <debbie.hall@carolinabeach.org>  
**Cc:** Alisa Perry <alisa.perry@carolinabeach.org>  
**Subject:** Budget Amendments

Debbie,

I would like to request the following budget adjustments.

\$15,000 from 30-900-046 Stormwater Professional Services to 30-900-003 Stormwater Overtime Pay

\$1,147.50 from 30-900-046 Stormwater Professional Services to 30-900-005 Stormwater FICA

\$1,927.50 from 30-900-046 Stormwater Professional Services to 30-900-007 Stormwater Retirement

Let me know if you have any questions. Thanks for your help.

*Brian Stanberry*  
Director of Public Works  
Town of Carolina Beach  
910-458-5291 office  
910-443-1537 mobile  
brian.stanberry@carolinabeach.org



**DISCLAIMER:**  
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Lynn Barbee  
*Mayor*

Joe Benson  
*Council Member*

Jay Healy  
*Council Member*



Deb LeCompte  
*Mayor Pro Tem*

Mike Hoffer  
*Council Member*

Bruce Oakley  
*Town Manager*

**TOWN OF CAROLINA BEACH**  
1121 N. Lake Park Boulevard  
Carolina Beach, North Carolina 28428

## **BUDGET TRANSFER REQUEST**

**To:** Debbie Hall, Finance Director

**From:** Mark Meyer, Public Utilities Director

**Re:** Budget transfer

**Date:** Feb 28th, 2024

**Budget transfer amount:** \$ 3,500

**From:** 30-812-045 (Contract Services)

**To:** 30-800-045 (Contract Services)

**Explanation:** Cover the work on water Projects

**Mark Meyer**

**Director of Public Utilities, Town of Carolina Beach**

Lynn Barbee  
*Mayor*

Joe Benson  
*Council Member*

Jay Healy  
*Council Member*



Deb LeCompte  
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Bruce Oakley  
*Town Manager*

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Carolina Beach, North Carolina 28428

## **BUDGET TRANSFER REQUEST**

**To:** Debbie Hall, Finance Director

**From:** Mark Meyer, Public Utilities Director

**Re:** Budget transfer

**Date:** Feb 28th, 2024

**Budget transfer amount:** \$ 3,500

**From:** 30-800-014 (Travel and Training)

**To:** 30-800-046 (Professional Services)

**Explanation:** Cover the increase of Well 15H drawdown testing

**Mark Meyer**

**Director of Public Utilities, Town of Carolina Beach**

Lynn Barbee  
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Jay Healy  
*Council Member*



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*Town Manager*

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## **BUDGET TRANSFER REQUEST**

**To:** Debbie Hall, Finance Director

**From:** Mark Meyer, Public Utilities Director

**Re:** Budget transfer

**Date:** Feb 28th, 2024

**Budget transfer amount:** \$ 22,000

**From:** 30-812-045 (Water Contract Services)

**To:** 30-812-026 (Water Maint and Repair)

**Explanation:** Cover Water maint and repair equipment in the Field

**Mark Meyer**

**Director of Public Utilities, Town of Carolina Beach**

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*Council Member*



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*Town Manager*

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Carolina Beach, North Carolina 28428

## **BUDGET TRANSFER REQUEST**

**To:** Debbie Hall, Finance Director

**From:** Mark Meyer, Public Utilities Director

**Re:** Budget transfer

**Date:** Feb 28th, 2024

**Budget transfer amount:** \$ 12,010.83

**From:** 30-811-045 (WWC Contract Services)

**To:** 30-811-074 (WWC Capitol Projects over \$10k)

**Explanation:** Cover 12,010.83 over on LS#5 replacement WWC

**Mark Meyer**

**Director of Public Utilities, Town of Carolina Beach**

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*Town Manager*

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## **BUDGET TRANSFER REQUEST**

**To:** Debbie Hall, Finance Director

**From:** Mark Meyer, Public Utilities Director

**Re:** Budget transfer

**Date:** Feb 28th, 2024

**Budget transfer amount:** \$ 1,250

**From:** 30-810-0045 (WWTP Contract Services)

**To:** 30-810-011 (WWTP COMMUNICATIONS)

**Explanation:** Cover Cell Phones and Communcations WWTP

**Mark Meyer**

**Director of Public Utilities, Town of Carolina Beach**

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*Mayor*

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*Council Member*



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## **BUDGET TRANSFER REQUEST**

**To:** Debbie Hall, Finance Director

**From:** Mark Meyer, Public Utilities Director

**Re:** Budget transfer

**Date:** Feb 28th, 2024

**Budget transfer amount:** \$ 1,500

**From:** 30-810-045 (WWTP Contract Services)

**To:** 30-810-032 (WWTP Chemical and Lab Fees)

**Explanation:** Cover Chemical and Lab Fees for WWTP

**Mark Meyer**

**Director of Public Utilities, Town of Carolina Beach**



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*Council Member*



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*Town Manager*

**TOWN OF CAROLINA BEACH**  
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Carolina Beach, North Carolina 28428

### **BUDGET TRANSFER REQUEST**

**To:** Debbie Hall, Finance Director

**From:** Mark Meyer, Public Utilities Director

**Re:** Budget transfer

**Date:** Feb 28th, 2024

**Budget transfer:**

<b>From:</b> 30-810-045 (WWTP) Contract Services	\$21,690
<b>To:</b> 30-810-003 (WWTP) Overtime	\$ 18,000
30-810-005 (WWTP) FICA	\$ 1,377
30-810-007 (WWTP) Retirement	\$ 2,313

**Explanation:** Cover Overtime WWTP

**Mark Meyer** ·

**Director of Public Utilities, Town of Carolina Beach**

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Jay Healy  
*Council Member*



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*Town Manager*

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Carolina Beach, North Carolina 28428

## **BUDGET TRANSFER REQUEST**

**To:** Debbie Hall, Finance Director

**From:** Mark Meyer, Public Utilities Director

**Re:** Budget transfer

**Date:** Feb 28th, 2024

**Budget transfer amount:** \$ 5,000

**From:** 30-813-021 (W&S Fleet Repair and Maint of Tires)

**To:** 30-810-016 (WWTP Repair and Maint of Equipment)

**Explanation:** Cover Repair and Maint of Equipment WWTP

**Mark Meyer**

**Director of Public Utilities, Town of Carolina Beach**

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Jay Healy  
*Council Member*



Deb LeCompte  
*Mayor Pro Tem*

Mike Hoffer  
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Bruce Oakley  
*Town Manager*

**TOWN OF CAROLINA BEACH**  
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Carolina Beach, North Carolina 28428

## **BUDGET TRANSFER REQUEST**

**To:** Debbie Hall, Finance Director

**From:** Mark Meyer, Public Utilities Director

**Re:** Budget transfer

**Date:** Feb 28th, 2024

**Budget transfer amount:** \$ 1,500

**From:** 30-810-045 (WWTP Contract Services)

**To:** 30-810-032 (WWTP Small Tools and Equipment)

**Explanation:** Cover Small tools for WWTP

**Mark Meyer**

**Director of Public Utilities, Town of Carolina Beach**

Lynn Barbee  
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Jay Healy  
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**TOWN OF CAROLINA BEACH**  
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## **BUDGET TRANSFER REQUEST**

**To:** Debbie Hall, Finance Director

**From:** Mark Meyer, Public Utilities Director

**Re:** Budget transfer

**Date:** Feb 28th, 2024

**Budget transfer amount:** \$ 27,824

**From:** 23-013-0074 (Tradewinds Sewer Capital over 10K) \$19,311.90

23-002-046 (Phase C Professional Service) \$8,512.10

**To:** 23-014-074 (WWTP Oxidation Ditch Project)

**Explanation:** Cover the work WWTP Oxidation Ditch Project

**Mark Meyer**

**Director of Public Utilities, Town of Carolina Beach**



## AGENDA ITEM COVERSHEET

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**PREPARED BY:** Kim Ward, Town Clerk

**DEPARTMENT:** Clerk

**MEETING:** Town Council Meeting 4/9/2024

**SUBJECT:** Approval of Council Meeting Minutes

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**BACKGROUND:**

Attached are the meeting minutes from March 12 and 26, 2024.

**ACTION REQUESTED:**

Review and consider approving under the consent agenda.

# CAROLINA BEACH

Town Council Regular Meeting

Tuesday, March 12, 2024 - 6:00 PM

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



## MINUTES

### CALL TO ORDER

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

### PRESENT

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

### ALSO PRESENT

- Town Manager Bruce Oakley
- Finance Director Debbie Hall
- Town Clerk Kim Ward
- Town Attorney Noel Fox

Mayor Barbee recognized former Council Members Tom Bridges and JoDan Garza in the audience.

### ADOPT THE AGENDA

**ACTION:** Motion to adopt the agenda, removing item 8

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

### CONSENT AGENDA

1. Set a Public Hearing for April 9, 2024, to Consider a Text Amendment to Chapter 40 Article III Zoning District Regulations, Article XIV Nonconforming Situations, and Article XVIII Definitions to Amend Maximum Height Standards and Maximum Lot Coverage  
Applicant: North Pier Holdings, LLC
2. Set a Public Hearing for April 9, 2024, to Consider a Zoning Map Amendment to Consider a Request to Rezone 204 Harper Avenue from Mixed Use (MX) to Central Business District (CBD)  
Applicant: STLBC LLC
3. Set a Public Hearing for April 9, 2024, to Receive Public Input on the 2024/2025 Budget
4. Set a Public Hearing for April 9, 2024, to Consider a Text Amendment to Chapter 40 Article III Zoning District Regulations, Article V Off-Street Parking and Loading Requirements; Parking,

and Article IX Development Standards for Particular Uses to Amend Standards for Wine and Beer Shops

Applicant: Neapolitan Enterprises Inc.

5. Approve Kure Beach and North Carolina Aquarium Sewer Rates
6. Approve Contract for Auditing Service for Period Ending June 30, 2024
7. Budget Amendments/Transfers
8. 2024 Steve Haydu St. Patrick's Lo Tide Run Raffle Donation Request
9. Consider Retaining Legal Counsel for Any Potential Claims Regarding PFAS
10. Approval of Council Meeting Minutes

Council Member Hoffer asked if some of the funds referred to in the audit, such as those for the Island Greenway and Cape Fear multi-use path project, are still active. Ms. Hall said no, those were previously closed out but were copied over from last time and not removed. She said she can remove any projects that have been closed out.

Council Member Hoffer asked whether there are any restrictions on communication regarding the rezoning coming up on the next agenda. Ms. Fox said there are no restrictions, and Council Members may have discussions about the issue.

Council Member Benson asked about the plan Kimley-Horn is working on regarding a proposed traffic redesign to coincide with paving of Lake Park Boulevard and phase two of the marina. Mr. Oakley said Kimley-Horn is working on several proposed plans for the Town, and he expects them to start coming in soon.

Mayor Pro Tem LeCompte mentioned that the budget transfers include grant money that has come in, which means the Town now owns Freeman Park outright. She thanked the former Council Members in attendance for the work they did to get this done.

**ACTION:** Motion to adopt the consent agenda, removing item 8

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

### **SPECIAL PRESENTATIONS**

11. Events Update by Tim Murphy

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

- Pleasure Island Community Blood Drive – March 13 at Rec Center
- Steve Haydu St. Patrick's Lo Tide Run (20<sup>th</sup> anniversary) – March 16 starts/ends at Kindred Weddings & Events
- Silver Dollar After Race Beer Garden – March 16 at Boardwalk
- Nollie's Street Skate Competition – March 23 at Pelican Lane
- Fancy Pants Croquet Soiree – April 14 at Mike Chappell Park

- Tinted Turtle Trot – April 21 at Mike Chappell Park
- Carolina Beach Market – begins May 18 at Lake Park and continues every Saturday through September 28
- Movies at the Lake – begins May 26 and continues every Sunday through September 1
- Family Night – begins June 13 at Lake Park and continues every Tuesday through August 20
- Boardwalk Bingo – begins May 29 at the Gazebo and continues every Wednesday through August 28
- Fireworks/Music – begins Friday, May 24, and continues every Thursday through the season with the exception of July Fourth (Wednesday, July 3) and Labor Day (Friday, August 30) shows

## 12. Manager's Update

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

- Public Hearing for Non-Profit Requests – March 12
- Community Input Public Hearing – April 9
- Budget Workshop – April 23
- Budget Workshop (if needed) – April 30
- Budget Open House – May 7
- Revenue and Expense Projections – May 14
- Budget Message and State of the Town Presentation – May 28
- Budget Adoption – June 11

Mr. Oakley said an Economics Professor from the University of North Carolina Wilmington will be part of the May 28 presentation, providing forecasting and ideas. Mayor Barbee encouraged the public to attend this event because he expects it to contain fascinating data.

Mr. Oakley also gave an update on various projects:

- Brandy Myers Memorial Playground: The project is wrapping up, and a ribbon cutting is planned for mid-April.
- Lake dredge and stabilization: The project is moving along; the contractor is repairing sidewalks.
- Marina: The new electrical panel is in; the electrical project is the last major piece.
- Ocean Boulevard sidewalk: A pre-construction meeting identified some issues that need to be addressed, but this will only delay the project by a few days, not weeks.
- Parking lot: The new lot at Fayetteville Avenue and Hamlet Avenue is almost ready.
- Pre-season prep: Work is underway in the Boardwalk area; benches are being sanded and repainted.
- Roadway maintenance: A 4-ton asphalt hotbox (paving machine) will arrive in 2 weeks; a training course for all applicable Public Works staff is included with the equipment.
- 2024 paving project: The project scope is 12 street segments and 1.05 miles. Proposals have been received and the contractor identified for the 2024 phase of pavement condition index (PCI) paving. The project is to be completed prior to summer.
- Bike and pedestrian plan update: The Bike/Ped Plan Steering Committee will start meeting in April, and a plan should be available by February.



- BeBot beach cleaner: The Town will be using the tool this year on the strand from Hamlet Avenue to Harper Avenue. Planning Director Jeremy Hardison is working with Coastal Area Management Act (CAMA) to secure the permits. This is sponsored by Keep New Hanover Beautiful, an affiliate of Keep America Beautiful, and will not affect the beach rake schedule.
- Freeman Park: The Town used grant money to pay off the debt last week and now owns this free and clear. Other projects will be funded, and \$243,000 will remain to go back into the sand fund. Mr. Oakley thanked staff members and previous Councils for making this happen.

Mayor Barbee asked if there is an update about the South Lake Park Boulevard sidewalk project. Mr. Oakley said estimates were high because of the limited right-of-way, so the Town is now looking at doing a smaller section and is waiting for options to come back. He said he will need to follow up with Council with details.

### **PUBLIC COMMENT**

JoDan Garza of 810 Cape Fear Boulevard said he appreciates all residents who serve on Town committees. He said he is an advocate for using room occupancy tax (ROT) funds for the bathroom project and suggested the Town look into having residents sponsor a brick for the facility. Mr. Garza said the Town needs more bathrooms for beach patrons, and he would like to see shrubbery around all corners of Dow Road and other main streets trimmed before peak season begins. He also spoke against high-rise hotels and said there is a need to bring back the Freeman Park Committee. Mr. Garza encouraged residents to come to Council and Planning and Zoning Commission meetings to share their thoughts about the proposed Embassy Suites project. He said he would like to see budget vs. actual numbers for the marina project.

Mohamed Hassan of 1215 Snapper Lane suggested that dates, times, and places for all events, especially budget meetings, be noted on Power Point slides. He said he wants to get involved with the Town. Mr. Hassan said he is the sole driver of two separate cars and would like for his residential parking pass to apply to both of them.

Kate Dolan of 505 Green Court spoke against the proposed Embassy Suites project and said a traffic study is not feasible until Proximity opens. She suggested staying with the current zoning plan and increasing property taxes for property owners who rent out their property.

### **PUBLIC HEARINGS**

#### 13. Public Hearing Regarding Non-Profit General Fund Contributions

Council receives funding requests from non-profit organizations each budget year. Council will discuss the requests at an upcoming budget workshop.

**ACTION:** Motion to open the public hearing to hear non-profit General Fund requests

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

Skip Henson of the Federal Point Historic Preservation Society reviewed what the organization does and how it acquires some of the items in its possession. He said there is one paid staff member, with all other work coming from volunteers. Mr. Henson said the organization is requesting \$9,000, the same amount as last year.

Liz Baird of the North Carolina Aquarium Society reviewed what the organization does and its economic impact. Hap Fatzinger of the North Carolina Aquariums Division detailed the mission of the Fort Fisher facility and future plans. Joanna Zazzali of the Fort Fisher facility discussed community impact and the new reservation system. She said last year set a record with over a half-million visitors.

Jennifer Hufham of the Pleasure Island Sea Turtle Project said the organization is not asking for anything different this year, but she wanted to take the opportunity to introduce herself.

LeeAnn Tluchowski and Jim DeGilio of the Pleasure Island Chamber of Commerce reviewed the organizations goals, priorities, annual events, past accomplishments, and upcoming initiatives.

No one else requested to speak.

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

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

14. Text Amendment to Chapter 40 Article V Off-Street Parking and Loading Requirements; Parking to Amend Church Parking  
Applicant: St. Paul's United Methodist Church

Applicant St. Paul's United Methodist Church has petitioned the Town for a text amendment to establish a less restrictive parking requirement for churches. The existing ordinance language has auditoriums, stadiums, assembly halls, gymnasiums, theaters, churches, and convention centers in one category. The parking requirement is 1 per 200 square feet plus 1 per every 4 persons accommodated by the facility at maximum capacity. This has required St. Paul's, Carolina Beach Presbyterian Church, and Seaside Chapel to provide a large number of on-site parking spaces for additions that have been built to the churches. This text amendment is similar to the parking requirement in neighboring municipalities.

The text amendment consists of removing churches from the existing category of uses, putting them in their own category, and requiring 1 space per 300 square feet of indoor gross floor area. Auditoriums, stadiums, assembly halls, gymnasiums, and convention centers will still have the existing parking requirement. This ordinance change creates both an easier interpretation for staff and does not overburden the church with a restrictive parking requirement. A less stringent parking requirement reduces the need for larger surface parking lots and therefore improves stormwater runoff. If adopted, all 5 churches in the Town would be in compliance.

The text amendment is in general conformity with the 2020 Land Use Plan. Staff recommends approval of the text amendment as proposed, and the Planning and Zoning Commission unanimously recommended approval as proposed last month.

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

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

Senior Planner Gloria Abbotts presented the details. She said St. Paul's has had to provide off-site parking to meet existing requirements.

Mayor Barbee asked what problems St. Paul's is currently experiencing as a result of existing requirements. Tom Bridges of 600 Ocean Boulevard, who is Chair of the Church Council at St. Paul's, said he does not foresee any events in which the whole building would be full at one time. He said the proposed changes would allow more flexibility with planning. Stuart Milton of 313 Wilson Avenue, Pastor of St. Paul's, said the off-site parking spaces are at least a block away from the church, and he has been told that parking at that location has never been used for church activities. He said the change will allow the church to use that land in different ways.

Mayor Barbee asked if anyone from the public wanted to speak.

JoDan Garza of 810 Cape Fear Boulevard expressed concern that getting rid of the need for the secondary parking lot could pose problems if the church grows on its current footprint. Mr. Hardison said a different use on the church site would require the church to provide parking for the addition.

No one else requested to speak.

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

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

Council Member Hoffer said he thinks paring down parking for churches is a good thing. Council Member Benson said common sense is in line with the proposed change.

**ACTION:** Motion that Council, whereas in accordance with provisions of the NCGS, does hereby find and determine that the adoption of the following ordinance amendment to amend Chapter 40 Section 40-150 Off-Street Parking Standards to amend standards for church parking is consistent with the goals and objectives of the adopted Land Use Plan and other long-range plans as presented

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member

Benson, Council Member Hoffer  
*Motion passed unanimously*

## ITEMS OF BUSINESS

15. Text Amendment to Chapter 34 Streets, Sidewalks, and Rights-of-Way, Article III Obstructions to Amend Sidewalk Cafe Encroachment Allowances  
 Applicant: The Silver Dollar

Applicant The Silver Dollar has petitioned the Town to amend sidewalk cafe encroachment allowances. The Town amended the sidewalk cafe regulations in November 2023 with input from business owners. Upon the adoption of the current sidewalk cafe ordinance, The Silver Dollar built a barrier without permits. The Silver Dollar was sent a violation letter on December 20, 2023. The barrier that was installed for the business' sidewalk cafe was in violation of the following:

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

The applicant's proposal addresses the area of permitted encroachment. The applicant proposes that sidewalk cafe encroachments shall be allowed to encroach one-third of the sidewalk width. The existing ordinance allows for one-fourth of the sidewalk width for encroachments.

This change would allow for a 6-foot encroachment on Pavilion North, Pavilion South, Carolina Beach Avenue North, and Cape Fear Boulevard. No changes are proposed for Lake Park Boulevard and the oceanfront Boardwalk. The expansion of the encroachment area includes all allowable encroachments, not just sidewalk cafes. The existing encroachment area has been in effect since 2007. The existing area has created a balance between business interests and pedestrian safety.

Staff does not recommend approval of the text amendment as proposed. Based on Technical Review Committee (TRC) comments, the larger encroachment would reduce the walkable area in an already congested area of the Boardwalk during peak season. The one-third encroachment would prevent the Town from providing the 2-foot buffer in between the pedestrian walkway for trash cans, benches, plantings, and other amenities on either side of the right-of-way

Ms. Abbotts presented the details. She reiterated that the proposed changes would apply not only to sidewalk cafes but also to other encroachments such as signage, merchandise, and clothing racks.

Attorney Lee Levinson, representing The Silver Dollar, said the applicant is pursuing this change on behalf of all businesses in the area in an attempt to clarify everything and ensure everyone is treated equally.

Council Member Benson asked if the Town has defined a minimum width for public conveyance on the right-of-way. Mr. Hardison said the Town went through this 15 years ago when crafting the sidewalk

cafe allowance and considered what the appropriate area for pedestrian travel would be. He said they came up with a minimum width of 4.5 feet for travel within these areas.

Mayor Barbee said he had concerns about the area across from The Silver Dollar eventually having a use that could also apply for a sidewalk cafe permit, causing further encroachment.

Mayor Barbee asked if anyone from the public wanted to speak, although a public hearing is not required for this item.

JoDan Garza of 810 Cape Fear Boulevard said the Town has done a lot of work in the past few years to make the beach accessible to those with disabilities. He said he would be against the proposed changes.

Mohamed Hassan of 1215 Snapper Lane said the purpose of regulations is to ensure the public has room to move back and forth, and this would be setting a standard that doesn't make sense. He suggested observing each area to decide what is appropriate.

Cynthia Temoshenko of 1311 South Lake Park Boulevard said as a person with a disability, she is aware of the need for space for people to navigate. She said she likes outside seating, but safety must be considered.

No one else requested to speak.

Council Member Benson said he would be in favor of allowing The Silver Dollar's sidewalk cafe to encroach one-third of the sidewalk width as long as there is not a business across the right-of-way doing the same thing.

Council Member Healy said he agrees that the proposed changes could be a safety issue, especially on Thursday nights during the summer.

Mr. Hardison said there are different rights-of-way around the Boardwalk because the oceanfront area is owned by the Town and will not be developed.

Mayor Barbee said the proposal would invite traffic into an area that will then be pinched off, so he doesn't think it will work.

Mayor Pro Tem LeCompte said the Town worked on the sidewalk cafe ordinance for months and invited the public and business owners to give input on multiple occasions. She said a standard has been set, and for the applicant to say they were unaware means they ignored what was happening. Mayor Pro Tem LeCompte said the Town has worked hard to make the Boardwalk accessible, and she doesn't think it impedes people to have different standards on different blocks because of the one area that won't be developed. She said no one knows what will happen with the property across from The Silver Dollar.

Council Member Benson suggested starting with one-third of the sidewalk width, and if a business locates across the way and wants to submit for a sidewalk cafe permit, then that could be rescinded.

Mayor Pro Tem LeCompte said she doesn't like the idea of going back and forth, and she is not willing to risk public safety for The Silver Dollar to have an extra foot.

Council Member Hoffer said he is sympathetic to what Council Member Benson is saying, but granting the proposed changes makes him nervous because pressure could result if another business locates across the way.

**ACTION:** Motion of denial to amend Chapter 34 Article III as presented

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Hoffer

Voting Nay: Council Member Benson

*Motion passed 4-1*

Council Member Healy said The Silver Dollar has done some great things for the area.

#### 16. Committee Appointment – Bike/Ped Committee

A member of the Bike/Ped Committee resigned, leaving an unexpired term ending June 30, 2026.

Council made the following committee appointment:

- Bike/Ped Committee – Crystal Lee

Mayor Barbee said those who were not appointed can come to meetings and participate in conversations.

#### **COUNCIL COMMENTS**

Mayor Pro Tem LeCompte reminded everyone about the blood drive Wednesday at the Rec Center and said it was scheduled later in the day for those who can't make it earlier.

Council Member Healy urged everyone to wear sunscreen.

Mayor Barbee asked Mr. Hardison if there is a height limit on hotels in the Central Business District. Mr. Hardison said there is not.

Council Member Hoffer said this Friday the Friends of CB Parks & Greenways will be giving away trees to residents. He said March 22 is NC Arbor Day, and the group will do some plantings in the public areas around the Lake, elementary school, and municipal center. Council Member Hoffer said April 20 is the 5-year anniversary of the Island Greenway, and he suggested having a celebration. He said he and Mayor Pro Tem LeCompte have been having discussions about the plantings on the south side of the Lake to determine what was planted, what is thriving, and how to keep that area vibrant and expand the program.

Council Member Benson said the Operations Advisory Committee will submit line of sight issues at intersections. The committee will also be working on 6 street-end projects, and members may need to borrow some tools from the Town.

**ADJOURNMENT**

Mayor Barbee adjourned the meeting at 8:00 PM.

# CAROLINA BEACH

Town Council Workshop

Tuesday, March 26, 2024 - 9:00 AM

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



## MINUTES

### CALL TO ORDER

Mayor Barbee called the meeting to order at 9:00 AM.

### PRESENT

Mayor Lynn Barbee

Mayor Pro Tem Deb LeCompte

Council Member Jay Healy

Council Member Joe Benson

Council Member Mike Hoffer

### ALSO PRESENT

Town Manager Bruce Oakley

Assistant Town Manager Ed Parvin

Finance Director Debbie Hall

Town Clerk Kim Ward

Mayor Barbee said the item regarding the Parks, Recreation, and Open Space Master Plan will move to the end of the agenda because the presenter is running late. He also said after the conclusion of the first item, he has some questions for Mr. Oakley on the public records request process.

### DISCUSSION ITEMS

1. Proclamation Recognizing Benjamin Anderson for Eagle Scout Achievement

Benjamin Anderson, son of Town Harbor Master Jarrett Anderson, received his Eagle Scout achievement in January 2024. Council recognized him for his accomplishments and service to the Town, which included building 15 lifejacket stands. Mayor Barbee read and presented Proclamation No. 24-2302, which declared March 26, 2024, Benjamin Anderson Day.

Mayor Barbee asked Mr. Oakley to explain how the public records request process works. Mr. Oakley said the Town must keep, maintain, and provide public records when they are requested. He said a few things are exempt from the law, such as attorney/client privilege and personnel matters. Mr. Oakley said public records requests usually come from journalists and attorneys, but anyone can make a request. He said the request must be specific, and the process can take some time and municipalities can recoup reasonable costs such as charging for copies but typically cannot pass along the cost of staff time. Mr. Oakley added that Town Hall has a terminal where anyone can read his emails as well as those of department heads and Council Members. He said the terminal does not cover text messages



and personal email accounts, but any communications via those means regarding Town business is public record.

Mayor Barbee said his inquiry is in response to a public records request that he considers broad, so he is trying to figure out the scope. He said the request came from citizen Kristen Dunn, who is seeking all written, email, or text messages between all Town staff, Council Members, and private associates regarding the SeaWitch redevelopment project and land swap. He said he isn't sure how to scope the time period of the request and wants guidance because the Town has been trying to redevelop this property since long before he was in office.

Mr. Oakley said it doesn't hurt to err on the side of providing more, and he and Town Attorney Noel Fox will review everything to pare down any items that don't comply with the request. He said there have been multiple meetings about different projects on that site for several years, but Mayor Barbee said some of those projects didn't include SeaWitch. Mr. Oakley said they can put SeaWitch in the search engine as well as the names of the specific private associates she included in her request. He said oral communications are not covered, unless notes are taken during the exchange.

## 2. Centennial Committee Update

Centennial Committee Chair Maureen Lewis gave an update. She said there are 345 days until the official kickoff of the Centennial Celebration, which will be held on March 6, 2025, at Town Hall. Ms. Lewis said plans have been in the works for the Centennial Celebration for 4 years, and the mission is to honor the history and culture of the Town and celebrate the future. She reviewed planned programs, Town projects, a privately funded project, a bar and restaurant program, and logo merchandise.

Mayor Barbee said he assumes any items that are to be funded by the Town will come forth as recommendations to be voted on with the new budget in June. Mr. Oakley said this is correct.

## 3. Volleyball Court on Cape Fear Boulevard

Pleasure Island Volleyball is a group of locals who have historically played volleyball at Lazy Pirate. The owners of Lazy Pirate have reworked their business plan and no longer provide volleyball. In search of a new beach volleyball venue, members of the group have been to multiple Council meetings requesting that the Town build a volleyball court. They have also expressed interest in helping to finance the venture.

After discussions with Council and Parks & Recreation staff as well as review by the Technical Review Committee (TRC), it has been determined that the 300 block of Cape Fear Boulevard would be a viable location for a beach volleyball court. After review, the following has been determined:

### PARKING

Based on zoning, the court without designated viewing areas would require 4 parking spaces and 1 designated handicap space. If viewing areas/bleachers are proposed, then additional parking will be required. There are 3 parking spaces and 1 handicap space on-site. An additional parking space could

potentially be used from the adjacent parking lot that supports the Community Building and Help Center.

#### BATHROOMS

N.C. Building Code would require the addition of this use to have bathroom facilities. To meet this requirement, it has been recommended that the Community Building be unlocked during hours when the volleyball court is open.

#### LIGHTING

The group is interested in having lights for nighttime play. It is recommended that these lights be shielded and oriented to limit any impacts on surrounding residential uses.

#### HOURS OF OPERATION

The finalized hours of operation are still under discussion, but 8:00 AM to 9:00 PM was one consideration.

#### FENCING

The Town recommends contracting the installation of a fence designed to mitigate loss of sand due to wind and provide adequate height to prevent balls from leaving the court (possible netting on top of fencing similar to the ballfields at Mike Chappell Park).

#### SITE PLAN

Group members have developed an initial site plan. The Town recommends working with a contractor to develop a final design of the court location that maximizes the setback from Cape Fear Boulevard.

#### ACTION REQUESTED

If Council would like to move forward, staff recommends the following actions:

1. Contract to have a site plan completed.
2. Schedule a community meeting at the site to get input from adjacent property owners and Town residents.
3. Make any changes based on comments received and finalize site plans.
4. Get final quotes and allocate a budget from the General Fund. Receive any donations from the group and/or others interested in donating.

Mr. Parvin presented the details.

Council Member Healy asked if anyone has reached out to the Senior Center about this proposal. Mr. Parvin said Parks & Recreation staff has talked to them, but nothing formal has been done.

Mayor Barbee said the community meeting will be important for getting feedback. Mayor Pro Tem LeCompte said the meeting should be at the Senior Center or Community Building.

Mayor Barbee asked if the Town is punting anything out of the way to put the court on the proposed site. Mr. Parvin said no and added that years ago the Central Business District Master Development Plan proposed redevelopment of that site, but there is currently no solid plan for that area.

Mayor Barbee asked if there are any updated cost estimates for this project. Parks & Recreation Director Eric Jelinski said one quote including everything but lights came in at \$25,000, but they have reached out to other contractors and are awaiting additional quotes.

Mayor Barbee wanted to clarify that a motion today would not be approving an expenditure. Mr. Oakley said staff will come back with either a budget transfer or amendment to fund the project.

Council Member Hoffer said there was a mention in the packet about possibly hiring a site planner, but he doesn't think it's necessary to bring another paid consultant into this project. Mr. Oakley said he thinks they can do it in-house.

Council Member Hoffer said he hopes the Town can find ways to keep mature trees on the site intact. He said as far as financing, he is not comfortable with agreeing to a 50/50 match because the Town has already contributed staff time, in-kind donations, and assistance with moving sand. Council Member Hoffer said he wants the group to make a specific request instead of a blanket 50/50 approach.

**ACTION:** Motion to recommend staff move forward with the requested actions with no changes, which includes the community meeting

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

#### 4. Discussion on Island Greenway and Bike/Pedestrian Items

Council Member Hoffer led a discussion about upcoming items regarding the Island Greenway and other bike/pedestrian issues. He asked Council to consider adding cameras to the Greenway and said the University of North Carolina Wilmington (UNCW) Recreation Department requested to take on the project of providing the cameras and monitoring them. Council gave consensus to move forward with the project, assuming Mr. Oakley and Ms. Fox give it the green light.

Council Member Hoffer brought up the subject of e-bikes and said the Bike/Ped Committee has been discussing this topic for a while. He feels the committee is not going to recommend creating a new ordinance regulating e-bikes because there are already laws for most of the issues, there is not a lot of data showing problems, and it would be difficult for the Police Department to enforce.

Council Member Hoffer reminded staff there is some money in the budget to enhance intersections in Town that are potentially dangerous, and a recommendation may be made on these in April after paving is complete.

Mayor Pro Tem LeCompte said Sgt. Derrick McNeil of the Police Department is now certified in e-bikes, which is a helpful deterrent.

#### 5. Council to Consider Waiving a Citation

Mr. Oakley asked Council to consider waiving a civil citation. He said the violation was from an ice machine business on the Boardwalk, which has complied but incurred a penalty of \$750. Mr. Oakley said the property owner is requesting that the Town consider waiving that fee, which accrued at a rate of \$50 per day but stopped once work toward compliance began. He said in the past Council has voted to reduce citations, and the goal is compliance and not to be punitive.

Mayor Barbee asked for specifics about the violation. Planning Director Jeremy Hardison said it was a violation of the flood ordinance, which states that ice machines must be elevated. He said the violation was pointed out by another business, and staff sent a letter, gave the business 15 days to comply, and never got a response until sending a second letter with notice of the penalty. Mr. Hardison said staff met with the property owner on-site to look at options, and the ice machine has since been moved. He said the goal is compliance, but the Town uses the fining process to gain compliance.

Mayor Barbee said \$750 sounds like a lot of money, but he doesn't like the idea of reducing it to no penalty at all.

Council Member Benson asked if the property owner has been non-compliant with any other activities in the past. Mr. Hardison said on that property, it was a first for the property owner.

Council Member Healy suggested cutting the citation in half.

Council Member Hoffer suggested making the fine \$50 per day for the 14 days that communication from the Town was ignored, for a total of \$700.

**ACTION:** Motion to reduce the citation into half, which would be \$375

Motion made by Council Member Healy

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

## 6. Budget Amendment/Transfer

Ms. Hall presented the following budget amendment and/or transfer request:

- Appropriations: Appropriate \$170,000 from Powell Bill Reserves to account 10-561-019 Powell Bill M&O (Maintenance and Operations) Streets for paving street sections identified on the Pavement Condition Index (PCI) map.
- Transfers: Transfer \$55,000 from account 10-561-033 Powell Bill Supplies to account 10-561-19 Powell Bill M&O Streets for paving street sections identified on the PCI map.

The appropriation will decrease Powell Bill Reserves.

**ACTION:** Motion to approve the budget transfer as presented

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

7. Presentation of the Parks, Recreation, and Open Space Master Plan by Dr. James H. Hertisne

Mr. Jelinski said the Parks, Recreation, and Open Space Master Plan is a working document, but it will allow the Town to continue to pursue grant opportunities. He said the last plan helped secure points on Land and Water Conservation Fund (LWCF) applications for both Freeman Park and the new playground, and the ultimate goal is to turn this plan into future dollars.

Mr. Jelinski introduced Dr. James Herstine, who presented an overview of the Parks, Recreation, and Open Space Master Plan. Dr. Herstine is a retired UNCW Professor of Parks, Recreation, and Tourism Management who also served as the Parks and Recreation Director of the Town of Chapel Hill for 10 years. He said he has done 21 master plans and went over the reasons and purposes for updating the Town's plan. He said this is not a budget document, and it has no dollar amounts in it. Dr. Herstine said the intent is to provide a living document that gives an idea of where open space should occur and serves as a viable blueprint and plan of action to guide future orderly growth and development.

Dr. Herstine reviewed the needs assessment process and survey highlights. He said the survey determined that citizens want the following:

1. A safe and comprehensive system of dedicated pedestrian, bike, and non-motorized vehicular movement to include an expanded Island Greenway system
2. Construction, operation, and maintenance of a new and comprehensive multi-purpose Recreation Center and Fitness Complex with an indoor swimming pool
3. Dedicated pickleball and sand/beach volleyball courts
4. Additional public restroom facilities
5. Improved public parking at Parks & Recreation facilities, areas, and parks, particularly at the Boardwalk area, Lake Park, and Mike Chappell Park

Mayor Barbee said he would like to see these slides included in the plan as an executive summary. He emphasized that approving the plan is not committing to anything or even saying Council individually supports everything in it and said Council will deal with that during the prioritization and budget process.

Council Member Healy said the overall theme of the plan is safety.

**ACTION:** Motion to approve the plan as presented with two things: include slides in the plan under executive summary and note that this is for planning purposes only and Council is not approving any financial allocation to any of it at this moment

Motion made by Mayor Barbee

Voting Yea: Mayor Barbee, Mayor Pro Tem LeCompte, Council Member Healy, Council Member Benson, Council Member Hoffer

*Motion passed unanimously*

### **COUNCIL COMMENTS**

Mayor Pro Tem LeCompte said Council needs to look again at a multi-modal transportation plan. She said she and other Council Members are going to work with several committees and other groups to rehab the azalea garden behind Town Hall.

Council Member Healy said he would like to see more citations with significantly increased fines issued for destruction of public property.

Council Member Benson said the next King Tide is April 1-3. He said he will be monitoring Starfish Lane, as he expects it will work better since the stormwater improvements have been made. Council Member Benson also mentioned that Little Pink Houses of Hope will host 15 families this year, for a total of 45 visitors.

Council Member Hoffer said the skate event Saturday was great. He also thanked everyone who came out to help with the NC Arbor Day tree planting last Friday. Council Member Hoffer asked staff to draft an Arbor Day Proclamation for April 26, which is required every year as part of the Tree City USA initiative. He mentioned that bike/pedestrian improvements are always at the top of the community wish list and are the least expensive to implement, so he recommended that staff start putting these projects in every budget. Council Member Hoffer also asked staff to budget for sidewalks running from the Lake.

Mayor Barbee asked if the carnival group had requested an encroachment agreement. Mr. Oakley said he is supposed to hear from the operator soon. Mayor Barbee mentioned that this might be a good spot for the Pleasure Island Chamber of Commerce to have a Visitors Center, so he asked Mr. Oakley to check to see if this would work and possibly bring it back to Council. Mayor Barbee asked about the sidewalk south of the Lake. Mr. Oakley said staff is waiting on the N.C. Department of Transportation (DOT) to come back with a better option than the one previously presented. Council Members said they would take whatever DOT is willing to give to get it done. Mayor Barbee said he was approached by a local business to see if they could paint a mural on the electrical panel at the marina. Mr. Oakley said he will look into this to see what can be done.

### **ADJOURNMENT**

Mayor Barbee adjourned the meeting at 10:50 AM.



## AGENDA ITEM COVERSHEET

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**PREPARED BY:** Tim Murphy

**DEPARTMENT:** Parks and Rec

**MEETING:** Town Council Meeting 4/9/2024

**SUBJECT:** Events Update by Tim Murphy

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**BACKGROUND:**

Tim Murphy will give an update on the upcoming events.

**ACTION REQUESTED:**



## AGENDA ITEM COVERSHEET

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**PREPARED BY:** Kim Ward, Town Clerk

**DEPARTMENT:** Clerk

**MEETING:** Town Council 4/9/2024

**SUBJECT:** Proclamation for Safe Boating Week – May 18-24, 2024

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**BACKGROUND:**

The local US Power Squadron chapter is asking Town Council to support National Safe Boating Week by issuing a Proclamation setting May 18-24, 2024 as Safe Boating Week.

**ACTION REQUESTED:**

Members of the Cape Fear Sail & Power Squadron will be in attendance to speak about boater safety.

**RECOMMENDED MOTION:**

Motion to support Proclamation 24-2303 recognizing May 20-26, 2024 as Safe Boating Week.



# Proclamation



Town of Carolina Beach  
Town Council

**PROCLAMATION NO. 24-2303**

A PROCLAMATION OF THE TOWN COUNCIL OF CAROLINA BEACH, NORTH CAROLINA  
PROCLAIMING THE WEEK OF MAY 18-24, 2024  
AS SAFE BOATING WEEK

WHEREAS, the beautiful coastal waters of Carolina Beach represent a world renowned recreational resource that residents and visitors alike are drawn to each year for water and beach activities; and

WHEREAS, year-round, people continue to enjoy all that our natural environment has to offer through the joy of boating; and

WHEREAS, on average, 613 people die in the U.S. each year in boating-related accidents, with approximately 80% of these deaths caused by drowning; and

WHEREAS, in approximately 86% of drowning cases, the victim was not wearing a life jacket; and

WHEREAS, it is apparent that wearing a life jacket is the single most important factor in reducing boating-related deaths; and

WHEREAS, the National Safe Boating Council, supported by the U.S. Power Squadron and other national organizations, has set May 18 through 24 as National Safe Boating Week;

NOW, THEREFORE, IT IS HEREBY RESOLVED that the Town Council of the Town of Carolina Beach supports the U.S. Coast Guard and the Cape Fear Sail and Power Squadron and thereby proclaims May 18-24, 2024 as Safe Boating Week in this Town; and urges all persons to wear a life jacket at all times while boating.

This Proclamation is adopted this 9th day of April, 2024.

TOWN OF CAROLINA BEACH

\_\_\_\_\_  
Albert L. Barbee, Mayor

ATTEST:

\_\_\_\_\_  
Kimberlee T. Ward, Town Clerk



## AGENDA ITEM COVERSHEET

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**PREPARED BY:** Bruce Oakley, Town Manager

**DEPARTMENT:** Executive

**MEETING:** Town Council 4/9/2024

**SUBJECT:** Manager's Update

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**BACKGROUND:**

Town Manager Bruce Oakley will give an update on current and future projects.



## AGENDA ITEM COVERSHEET

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**PREPARED BY:** Kim Ward, Town Clerk

**DEPARTMENT:** Clerk

**MEETING:** Town Council Meeting 4/9/2024

**SUBJECT:** Public Hearing to Receive Public Input on the 2024/2025 Budget

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**BACKGROUND:**

Council will receive input from the public on the FY24/25 budget. This is an opportunity for the public to express their interest in what they would like to see in the upcoming budget. This will assist staff in preparing numbers to present at the May public hearing.

**ACTION REQUESTED:**

Open the public hearing to receive input on the FY24/25 budget.

**RECOMMENDED MOTION:**

Motion to open the public hearing.  
Motion to close the public hearing.



## AGENDA ITEM COVERSHEET

**PREPARED BY:** Jeremy Hardison, Planning & Zoning Commission      **DEPARTMENT:** Planning & Development

**MEETING:** Town Council – April 9, 2024

**SUBJECT:** **Zoning Map Amendment** to consider a request to rezone 204 Harper Avenue from Mixed Use (MX) to Central Business District (CBD).  
Applicant: STLNC, LLC

### **BACKGROUND:**

The applicant, STLNC LLC, has submitted a petition to consider rezoning 204 Harper Avenue from Mixed Use (MX) to Central Business District (CBD) Zoning. The neighboring property to the east is under the same ownership, formally the Welcome Inn (205, 207, 209 N. Lake Park Blvd), and is currently in the CBD. The applicant has requested the rezoning because to have consistent zoning and land uses for the property, they would like to see the same zoning apply to 204 Harper Ave, so all business-related decisions and operations fall under the same zoning guidelines.

For consistency and for the purpose of redevelopment it is best practice for the entirety of a property to be within the same zoning district. Redevelopment of the property would require the recombination of the property. One of the standards for creating zoning districts is to follow plotted lot lines. Guidance for the interpretation of zoning district boundaries comes from Sec. 40-45 (attachment 1) of the zoning ordinance. Previously 204 Harper Avenue had a single-family structure with the adjacent common ownership parcels was formally the Welcome Inn. The adjacent use to the west is a single-family, to the north is a multi-family structure and across the street to the south is a Hotel.

### **History:**

The property has been in the same ownership for over 50 years. The single-family house and Welcome Inn were built in the 30's. In 2023 the structures were demolished after a new hotel was approved for the site in 2022. The hotel has not started construction and the property was recently purchased. The Permit for the hotel authorization will expire September 14, 2024.

The 1984 Zoning Ordinance and Zoning Map had both properties, of 204 Harper Ave and the property where the Welcome Inn was in the B-1: Central District. In 2000, 204 Harper Ave was rezoned to MX and the Welcome Inn property was rezoned to CBD.

### **District Purpose and Permitted Uses:**

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

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

The Mixed Use District does allow for certain business uses like standard restaurants and eateries, general retail, offices, and mixed use commercial-residential but does not allow for more intense uses like bars and taverns, or commercial parking lots. A complete list of the uses allowed in both districts is shown on Attachment 2. The MX district is considered residential, and residents must abide by the standards of the noise ordinance for residential areas of a daytime level of 65dB(A) between the hours of 7:00am and 11:00pm, and the nighttime level of 55dB between the hours of 11:00pm and 7:00am. The Commercial district allows for a 75dB(A) daytime level between 7:00am and 11:00pm, and 65 dB(A) between the hours of 11:00pm and 7:00am, except on Friday and Saturday, the daytime levels shall remain in effect until midnight.

### **Dimensional Standards:**

<i>Zoning District</i>	<i>Primary Permitted Uses</i>	<i>Min. Lot Size</i>	<i>Min. Lot Width<sup>5</sup></i>	<i>Min. Front Yard</i>	<i>Min. Rear Yard</i>	<i>Min. Side Yards (Corner Lot-Min 12.5 ft.)<sup>5</sup></i>	<i>Max. Density</i>	<i>Max. Height</i>	<i>Max. Lot Coverage</i>
MX	Mixed Use	5,000 sq. ft.	50 ft.	20 ft.	10 ft. <sup>3</sup>	7.5 ft. <sup>3</sup>	17 units/acre	50 ft.	40%
CBD	Commercial Uses and Services, Entertainment	None	None	None	None, or same as abutting residential use or district	None, or same as abutting residential use or district	NA	50 ft. <sup>4</sup>	None

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

### **Land Use Plan**

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

### **ACTION REQUESTED:**

Consider recommending approval or denial of a zoning map amendment to rezone 204 Harper Ave from the MX zoning district to the CBD.

P&Z recommended approval of the rezoning from MX to CBD.

### **MOTION:**

Approval - whereas in accordance with the provisions of the NCGS, the Council does hereby find and determine that the adoption of the Zoning Map Amendment for 204 Harper Ave is consistent with the goals and objectives of the adopted Land Use Plan and other long-range plans.

A statement approving the proposed Zoning Map Amendment and declaring that this also amends the plan, to meet the vision of the community taken into consideration in the zoning amendment.

Denial - based on inconsistencies with the goals and objectives of the adopted Land Use Plan and/or other long-range planning documents and the potential impacts on the surrounding areas.

### **ATTACHMENTS:**

1. Sec. 40-45. Rules for interpretation of district boundaries.
2. Sec. 40-72. Table of permissible uses.

**ATTACHMENT 1**

**Sec. 40-45. Rules for interpretation of district boundaries.**

The Zoning Administrator shall decide the exact location of any zoning district boundary lines whenever uncertainty exists about the boundary lines shown on the official zoning maps, subject to appeal to the board of adjustment provided for in article XVI of this chapter. The determination of the exact location of a zoning district boundary shall be based upon the following rules:

- (1) Boundaries indicated as approximately following or within a street, alley, or railroad right-of-way, or utilities (electrical, gas, water main, etc.) easement shall be construed to be in the center of such right-of-way easement;
- (2) Boundaries indicated as following shore lines shall be construed to follow such shorelines, and, in the event of change in the shorelines, shall be construed as moving with the actual shoreline; boundaries indicated as approximately following the centerlines of streams, rivers, creeks, or other bodies of water shall be construed as following such centerlines;
- (3) Boundaries indicated as approximately following plotted lot lines shall be construed as following such lot lines;
- (4) Boundaries indicated as approximately following Town limits shall be construed as following Town limits; and
- (5) Boundaries indicated as parallel to or extension of features indicated in subsections (1), (2), (3) and (4) of this section shall be so construed. Distances not specifically indicated on the official zoning map shall be determined by the scale of the map.
- (6) In the event that a district boundary line on the zoning map divides a platted lot held in one ownership on the date of passage of the ordinance from which this chapter is derived, each part of the lot so divided shall be used in conformity with the district in which such part is located.

(Code 1986, app. A, § 2.3; Ord. No. 00-463, 10-10-2000)

**ATTACHMENT 2**

**Sec. 40-72. Table of permissible uses.**

P = Permitted.  
 CZ = May be permitted with conditional zoning  
 S = May be permitted by special use permit

USES OF LAND	MX	CBD
<b>Residential Uses</b>		
Two-family dwellings	P	

Manufactured home, on standard, single-family lot (See section 40-261)		
Multifamily dwellings (See section 40-260) Units <= 4	P	
Multifamily dwellings (See section 40-260) Units > 4	CZ	
Planned unit development, residential (See article XII of this chapter) Units <= 4	P	
Planned unit development, residential (See article XII of this chapter) Units > 4	CZ	
Single-family detached	P	
Attached single-family residential	P	
<b>Accessory Uses</b>		
Accessory uses and structures, including garages, carports, etc. (See sections 40-261, 40-548)	P	P
Home occupations, customary (See sections 40-261, 40-548)	P	P
Swimming pools, private (See sections 40-261, 40-548)	P	
Swimming pools, public (See sections 40-261, 40-548)	CZ	CZ
<b>Nonresidential Uses</b>		
Adult entertainment establishment (See		



sections 40-261, 40-548)		
Aircraft takeoff and landing zone (See sections 40-261, 40-548)	Prohibited	
Animal care facility		
Animal care facility with outdoor area (See section 40-261)		
Arcades, rides, games in enclosed buildings		P
Art galleries (See section 40-548)	P	P
Auctions sales		P
Automobile repair garages, including engine overhauls, body and paint shops and similar operations in enclosed buildings (See sections 40-261, 40-548)		
Automobile service stations and convenience stores		P
Bakeries, retail, off-premises sales		
Bakeries, retail, on-premises sales only		P
Banks/financial institutions		P
Barber shops		P
Bed and breakfast inn (See section 40-261)	CZ	CZ
Boat and personal water craft (PWC) sales and rental		P
Body piercing facility		
Bus terminal		P

Cafeteria or dining room for employees of permitted uses		
Car wash (See section 40-548)		
Cemeteries, public and private (See section 40-261)		
Churches/places of worship/parish houses	CZ	P
Commercial indoor recreation, such as bowling alleys, etc.		
Commercial outdoor recreation, such as miniature golf, golf driving ranges, par-3 golf courses, go carts and similar enterprises (See section 40-261)		
Contractors offices, no outdoor storage		P
Day nurseries, day care centers and preschools (See sections 40-261, 40-548)	CZ	CZ
Distillery		P
Drop-in child care providers (See sections 40-261, 40-548)	P	P
Dwelling for caretaker on premises where employed		
Drive-in/thru facility		
Dry stack storage facilities		
Ear piercing Facility		
Eating and/or drinking		

establishments (See section 40-261)		
Bars and taverns (See section 40-261)		CZ
Standard restaurants and eateries	P	P
Exhibition buildings		CZ
Exterminator service business offices, no outdoor storage of materials or equipment		P
Fire stations, emergency services, nonprofit	CZ	CZ
Fishing piers; public and private		P
Funeral homes		P
Furniture stores		
Gardens, arboretums and greenhouses, items for sale		P
General retail sales	P	P
Government/Public facilities and utilities (See section 40-261)	P	P
Ice-cream stores	P	P
Laundries and dry cleaning, delivered by customers		P
Laundromats, self-service		P
Libraries	P	P
Live entertainment complexes in enclosed buildings		CZ
Manufacturing incidental to retail business, sold on premises only, maximum of five		P

manufacturing operators		
Marinas, docks and/or piers, private		
Marinas, docks and/or piers, public or commercial		P
Medical and dental clinics	P	P
Meeting facilities	CZ	P
Mixed use commercial-residential (See section 40-261)	P	P
Motels and hotels	CZ	CZ
Motels and hotels, operated with a marina		
Multi-use facility	P	P
Municipal parking decks		P
Museums		P
Nursery, garden and landscaping, display and sales		
Offices, public, private or civic	P	P
Outdoor amusements, carnival and rides		CZ
Parking lot, commercial—permanent (See section 40-261)		P
Parking lot, Town operated (See section 40-261)	P	P
Private parking decks		CZ
Parking and loading areas serving uses in the same zoning district, on same or contiguous lot (See	P	P

article V of this chapter)		
Parking and loading areas serving uses in the same zoning district, on non-contiguous lot (See article V of this chapter)	CZ	P
Pet shops and pet supply stores		P
Photographic studio	P	P
Planned unit development, business (See article XII of this chapter)		CZ
Post offices		P
Postal mailing services, commercial		P
Printing/reprographics		P
Radio, computer, television and appliance repairs and rental service		P
Rental of any item, the sale of which is permitted in the district		P
Rental of golf carts, mopeds, and scooters (See section 40-261)*	P	P
Repair of any item, the sale of which is permitted in the district		P
Rooming house	Prohibited	
Schools, commercial for specialized training		P
Schools, public	CZ	CZ
Schools, private, general instruction	CZ	CZ
Seafood production and/or processing		

and/or dockage, wholesale and retail		
Shopping centers/big box	CZ	CZ
Spa health club		P
Studios, artist, designers, gymnasts, musicians, sculptures	CZ	P
Tailor shops	P	P
Tattoo studios (See sections 40-261, 40- 548)		
Telephone exchange		P
Tennis courts, commercial (See section 40-261)		CZ
Tennis courts, private (See section 40-261)	CZ	CZ
Theaters, in enclosed structure		P
Theaters, open air drama		CZ
Trailer, business		CZ
Trailer park, travel (See section 40-548)		
Trailer, temporary construction (See section 40-261)	P	P
Utilities, private (See section 40-261)	CZ	P
Vehicle sales lot and rental lot (See section 40-261)		
Water oriented businesses		CZ
Wholesale sales		P
Wine and beer shops (Retail/Off-Premise)		P
Wireless telecommunications facilities	See article X of this chapter	

<b>Manufacturing, Assembly and Processing (See section 40-261)</b>		
Beverages, bottling works		
Breweries (See section 40-261)		P
Flammable liquid storage, >1,000 gallons aboveground only (See section 40-261)		
General assembly and repair		
Ice manufacture, sales and storage		
Manufacturing and assembly, processing, and packaging, except those uses identified in section 40-261		
Planned development, industrial		
Sign painting and sign fabrication		
Storage yard, outdoor (See section 40-261)		
Recreational vehicle/boat storage, yard (See section 40-261)		
Towing service impound yard		
Warehouses, storage. Large and mini		
Woodworking shops		

\* **Note:** Rental of these items may be permitted in the designated zoning districts as an accessory use to other permitted commercial uses if parking and other standards can be met.

Amendment Number: R24-01



# PETITION FOR A ZONING MAP AMENDMENT

**IMPORTANT:** Supplementary information required as part of petition to be included:

**Completed rezoning petition.** For general use requests: The petition must be signed by the petitioner. Proof of compliance with GS 160A-383 regarding third party notification is required.

**Adjacent Property Owners Map.** A copy of the area as depicted on the Zoning Map which shows subject property (outlined in bold) and other surrounding properties within 100 feet of the subject property. Please label the names of the property owners directly affected by the zoning map amendment and those adjacent to or within 100 feet (excluding right-of-way) of the request.

This petition will be scheduled for the next possible meetings with the following boards: (1) Technical Review Committee, (2) Planning and Zoning Commission and (3) Town Council. The petitioner or representative should be present at all meetings to answer any questions. Contact the Department of Planning and Development for the schedule of meeting times and submittal deadlines. All meetings are held at the Municipal Administration Building, 1121 N. Lake Park Boulevard, Carolina Beach, NC 28428. Petitioners will be informed of any changes in date, time, or location of meetings. **Fee: to be submitted with application in accordance with the Town's annually adopted Rates and Fee Schedule**

- Minor Rezoning                      Rezoning of property less than 1 acre in size.
- Major Rezoning                        Rezoning of property one acre or greater in size.

### Petitioner

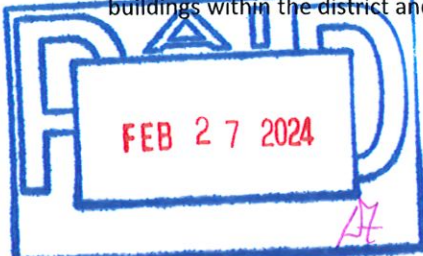
Petitioner's Full Name: SALBC, LLC Phone #: (828) 290 3875  
 Street Address: 120 Chadwick Ave # 19  
 City: Hendersonville State: NC Zip: 28792  
 Email: sallyatstx@gmail.com

### Requested Zoning Map Change

Address(s) of Requested Site: 204 Harper Ave C. Beach  
 Property Identification Numbers (PIN) R09006-002-006-000  
 Acreage/Sq. Ft: .77 acres Existing Zone: MXC Requested Zone: CBD  
 Signature of Petitioner: Sally Stundorant Date: Feb 23, 2024

### PURPOSE OF ZONING DISTRICTS

The petitioner seeks to show that the fundamental purposes of zoning as set forth in the N.C. enabling legislation would be best served by changing the zoning classification of the property. Among the fundamental purposes of zoning are: (1) to lessen congestion in the streets; (2) to provide adequate light and air; (3) to prevent the overcrowding of land; (4) to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; (5) to regulate in accordance with a comprehensive plan; (6) to avoid spot zoning; and (7) to regulate with reasonable consideration to the character of the district, the suitability of the land for particular uses, the conservation of the value of buildings within the district and the encouragement of the most appropriate use of the land throughout the Town.





# PETITION FOR A ZONING MAP AMENDMENT

**PETITIONER'S STATEMENTS:** This section is reserved for the petitioner to state factual information in support of the rezoning request. Any comments should be typed or written in block print on a separate piece of paper.

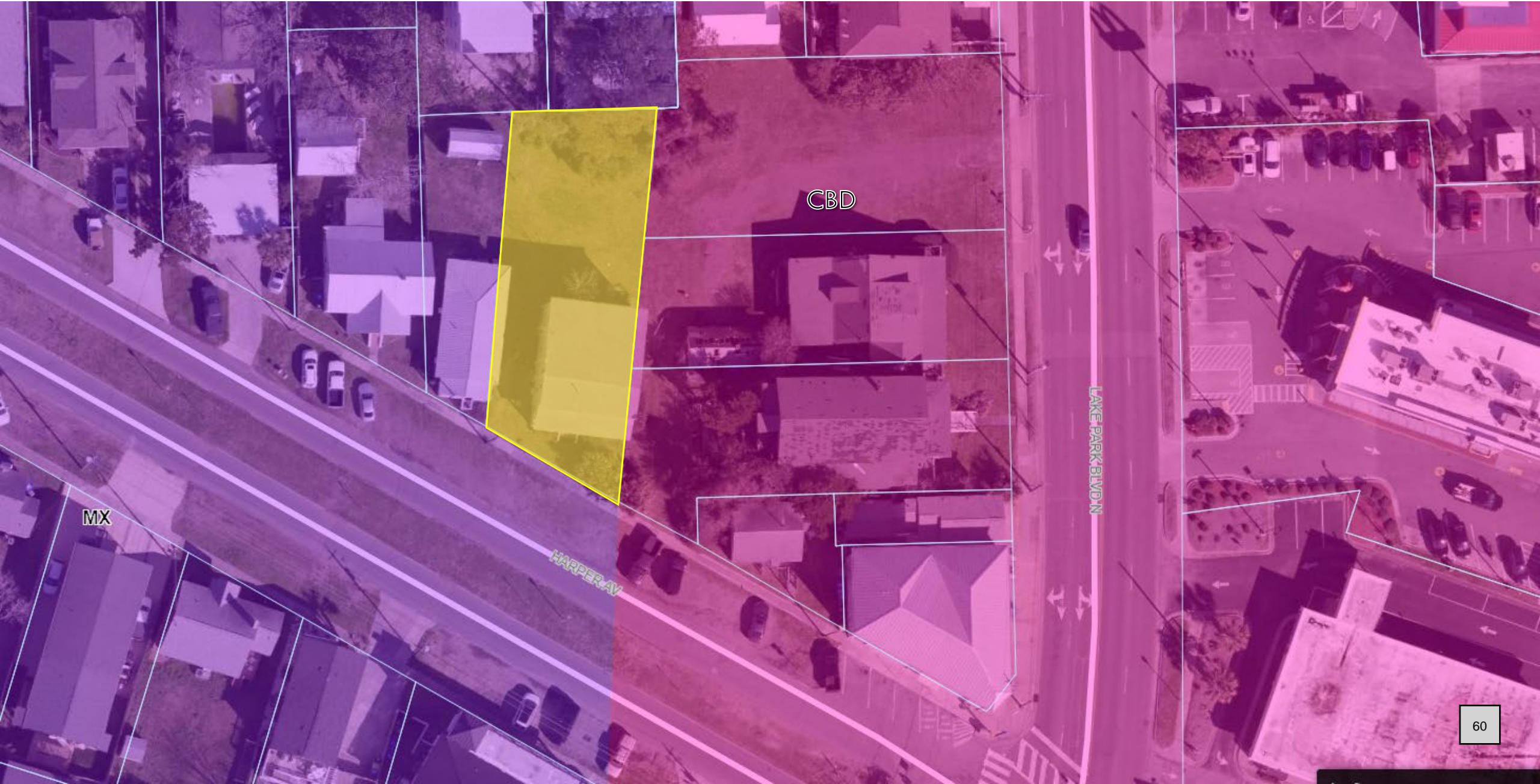
1. Please state the consistency of the proposed zoning map amendment with the Town's Land Use Plan and any other applicable *Town*-adopted plan(s).
2. Please describe the compatibility of the proposed rezoning with the *property* and surrounding area.
3. Please discuss the benefits and detriments of the proposed rezoning for the landowner, the immediate neighbors and the surrounding community.
4. Please explain the public need for additional land to be zoned to the classification requested.
5. Please discuss the impact on public services, facilities, infrastructure, fire and safety, parks and recreation, topography, access to light and air, etc.
6. Please include a description of the existing zoning patterns (zoning districts including overlay districts) and existing built environment (densities, building heights, setbacks, tree cover, buffer yards).
7. Include any additional arguments on behalf of the map amendment requested.

## Petition For A Zoning Map Amendment:

1. The four lots that connect to the east of the proposed change are all zoned CBD.
2. This will bring all four parcels of this tract into one zoning type instead of 75% of the parcel in the CBD and 25% in the Mixed Use.
3. This will consolidate the parcel as all one zoning type. There are no detriments known.
4. This will unify this tract of land and give more consistency as per the Land Use Plan.
5. No impacts due to this rezoning.
6. Two lots that touch this parcel are Mixed Use and the other 4 or 5 parcels are all CBD. This will bring more unity to the parcel and the area surrounding it.
7. This is in compliance with the Land Use Plan



204 Harper Ave





## AGENDA ITEM COVERSHEET

**PREPARED BY:** Haley Moccia, Planner

**DEPARTMENT:** Planning &  
Development

**MEETING:** Town Council – April 9<sup>th</sup>, 2024

**SUBJECT:** **Text Amendments** to amend Chapter 40:  
Sec. 40-73. - Dimensional standards for the various zoning districts,  
Sec. 40-74. Dimensional standards for lots and principal structures, and  
Sec. 40-426. - Reconstruction, maintenance, full or partial demolition and  
renovation of nonconforming situations.

Applicant: North Pier Holdings, LLC.

### **BACKGROUND:**

The applicant, North Pier Holdings, LLC., is applying for text amendments to exceed lot coverage for the addition of a riser room for fire suppression and to allow an elevator to exceed the 50' height limitation for three zoning districts.

The applicant owns 1800 Canal Drive, which is located within the R-1 Zoning district. The condominium structures located on this lot were constructed beginning in 1984 and 1985 and consist of two (2), cosmetically attached but structurally independent, three-level, piling-supported wood frame buildings. Combined, the structures contained 42 individual residential units. To date, a building permit has been issued for the renovation and repair of the buildings and to add four (4) penthouse units to the top of building 2, the reconstruction of the breezeways, and the relocation of the elevators and staircases. The proposed number of units overall decreased from 42 units to 40 units.

### **Building Height**

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

### **Lot Coverage**

The reason for the lot coverage text amendments was because the applicant needs to add a riser room to be able to install the required sprinkler system. The applicant was given the option by staff to reconfigure any demoed square footage and reallocate the demoed square footage into other additions as long as they did not exceed the original existing lot coverage.

## **PROPOSAL:**

### **Height Exception Text Amendments:**

The applicant proposes changing this section to allow the height of a structure to exceed the maximum height allowed by the zoning district for multi-family structures, if they have more than ten (10) units, in the R-1, MF, and T-1 zoning districts. The height allowance would pertain specifically to the installation or expansion of an elevator (See Attachment 2).

### **Lot Coverage Text Amendments:**

The text amendments would allow exceptions to exceed the lot coverage maximum for all zoning districts (See Attachment 2). This exception to lot coverage is specifically for multi-family structures with more than ten (10) units to accommodate riser rooms for fire suppression equipment. The size of the riser room allowed would be determined by the manufacturer spec sheets for the riser equipment and must be certified by a professional engineer.

## **HISTORIC CONSIDERATIONS:**

### **Height Ordinance:**

Historically, Carolina Beach, prior to 2002, allowed a building height of 35' with an additional allowance for roof pitch and other appurtenances. In 2002, a local builder proposed changing the roof height ordinance to allow for greater height or at least living space within the allowed height requirements of 35 feet with an additional 10 feet for roof pitch. The application was heard in the September P&Z meeting and November Town Council Meeting.

There was much discussion during the 2002 P&Z meeting. Staff stated the problem with the 35' height limit was an issue of how the height was measured. Since there were many allowances, it made it difficult for staff to administer the ordinance. Prior to this meeting, the existing ordinance allowed building height to be measured to the top of the living area and the attic, roof pitch, and other appurtenances could go beyond 35'. During public discussion, a property owner stated it was common practice for many owners to finish out the attic space into livable space after receiving the CO. The property owner suggested having a maximum height of 45 or 50' to include all appurtenances. The town Fire Chief did not want the height of buildings to exceed 50' due to complications with the ladder and electrical lines and would prefer a max height of 45'. From the discussion that occurred in the P&Z meeting, the P&Z board recommended having a hard 50' building height limit that accommodated all appurtenances and living areas to simplify the ordinance.

The text amendment then went to Town Council in November 2002. The Planning Director, Ms. Daughtridge, stated the P&Z board recommends the council consider a change to the ordinance to allow total maximum height of 50' for unsprinkled structures. Additionally, requests for beyond 50' (allowed for sprinkled structures) must be approved under conditional use permits. There were no public comments and minimal council member discussion. The text amendment was passed unanimously by Town Council.

### **Lot Coverage Ordinance:**

The lot coverage limitations for the various zoning districts have been unyielding ordinances, established well before the 2000s. The lot coverage limitations vary depending on the zoning district and can range

from 40% in most zoning districts (residential and some commercial) up to 60% for the Highway Business zoning district and 100% for the Central Business District.

### **LAND USE PLAN:**

All proposed text amendments are not in general conformity with the Town's 2020 Land Use Plan.

The building height text amendment proposals are in opposition of the Redevelopment section of the 2020 Land Use Plan – "Increased building heights (especially in or near the downtown area) may conflict with the character of existing areas." Additionally, in the Family Friendly Community section of the Land Use Plan, lower structure heights are viewed positively as a contributing factor to a family-friendly community.

The lot coverage text amendments are also in opposition to the Community Goals section of the Land Use Plan. Goal #4 states a desire of the community to reduce overall nonconformities in the town, but also respect existing uses and entitlements, and the rebuilding of structures. The lot coverage text amendments would allow all buildings, including nonconforming buildings, to exceed their current lot coverage for the addition of a riser room. In this specific situation, the building directly impacted by the approval of the lot coverage text amendments is considered nonconforming. The Zoning district in which the parcel is located allows a maximum lot coverage of 40%. The current lot has a lot coverage of 47%. Proposing expansions to lot coverage for an already non-conforming structure would not adhere to the intent of Goal #4 in the Land Use Plan.

### **STAFF CONCERNS:**

#### **Building Height Text Amendments (See Attachment - 2):**

#### **Sec. 40-73. - Dimensional standards for the various zoning districts. – (9)**

##### **Staff Concerns:**

1. Directly contradicts the historical standard for building height being limited to 50', with exception to the CBD.
2. This would allow other buildings to take advantage of the allowance of adding another floor to their building and then using the text amendment to breach the 50' height limitation for elevators. There are currently 42 (11 + unit) buildings located in the R-1, MF, and T-1 zoning districts. These existing 42 multi-family buildings could potentially take advantage of the proposed height allowance.
3. Staff understands the applicant would like to include limitations on which structures can take advantage of this text amendment but using "more than 10 units" as a limiting factor is an arbitrary number. As stated above, there are 42 buildings consisting of more than 10 units. Additionally, there are a total of 81 multi-family buildings consisting of anywhere from 3-10 units. It would be difficult for staff to explain why an 11-unit building can increase the height of their elevator and not a 10-unit building.
4. Anything over 50' in the current zoning ordinance is required to be approved by conditional zoning. The ordinance they propose would give that power to staff to permit by right.

**Sec. 40-74. Dimensional standards for lots and principal structures.**Staff Concerns:

1. The removal of “yard requirements” above is supported by Town staff because the term is not utilized and will be removed from the ordinance through the current Unified Development Ordinance proposal.
2. Staff also support the removal of table footnote #2 in the table.

**Lot Coverage Text Amendments:****Sec. 40-73. - Dimensional standards for the various zoning districts – (12)**Staff Concerns:

1. The current zoning ordinance is very strict with maximum lot coverage and does not allow any expansions no matter the situation. The applicant’s text amendment would allow staff the power to permit this lot coverage exception by right.
2. It does not address the upper floor usage of the space the riser room below occupies. The riser room equipment usually occupies a first story enclosure and then the stories above only need a small area (usually 4’x4’) for standpipes. These standpipes supply water vertically to all sprinkler systems installed on each floor. The remaining floors above the riser room are usually used for closet storage because the footprint space is already allocated by the riser room on the 1<sup>st</sup> floor and there are empty rooms above the riser room because the standpipes take up a much smaller space. Therefore, the exception of lot coverage for riser rooms also allows other uses for the unused area above the riser room level.
3. Staff understands the applicant would like to include limitations on which structures can take advantage of this text amendment but using “more than 10 units” as a limiting factor is an arbitrary number.

**Sec. 40-426. Reconstruction, maintenance, full or partial demolition and renovation of nonconforming situations.**Staff Concerns:

1. The applicant is proposing this amendment for clarification of the allowance in the non-conforming section of the ordinance.

**OPTIONS:**

1. Applicant’s amendments to allow height exception and lot coverage exception.
2. Staff’s recommended amendments (See Attachment - 3)
3. Leave the ordinance as is.

**RECCOMENDATION:**

The Planning and Zoning Board denied all text amendment proposals. Town staff also recommends denying all proposed text amendments, but if the council does consider changing the ordinance, staff recommends approval of the staff recommended amendments (Option 2).



**ACTION REQUESTED:**

Consider recommending approval or denial of the text amendments.

Staff recommends denial of the text amendments as proposed.

P&Z recommended unanimous denial of all text amendments.

**MOTION:**

Approval –to amend:

Building Height:

- Sec. 40-73. - Dimensional standards for the various zoning districts.
- Sec. 40-74. Dimensional standards for lots and principal structures.

Lot Coverage:

- Sec. 40-73. - Dimensional standards for the various zoning districts
- Sec. 40-426. Reconstruction, maintenance, full or partial demolition and renovation of nonconforming situations.

Denial –to amend:

Building Height:

- Sec. 40-73. - Dimensional standards for the various zoning districts.
- Sec. 40-74. Dimensional standards for lots and principal structures.

Lot Coverage:

- Sec. 40-73. - Dimensional standards for the various zoning districts
- Sec. 40-426. Reconstruction, maintenance, full or partial demolition and renovation of nonconforming situations.

**ATTACHMENTS:**

Attachment 1 –Text Amendment Application

Attachment 2 - Applicant Recommended Text Amendments

Attachment 3 - Staff Recommended Text Amendments

Attachment 4 – 2002 P&Z Minutes – Building Height Discussion

Attachment 5 – 2002 Town Council Meeting – Building Height Decision



### PETITION FOR A TEXT AMENDMENT

Petitions shall be submitted for review to the Department of Planning and Development located at 1121 N. Lake Park Blvd., Carolina Beach, NC 28428. Only complete petitions will be processed.

#### PETITIONER

Petitioner's Full Name: North Pier Holdings, LLC Phone #: (\_\_\_\_) - \_\_\_\_ - \_\_\_\_

Street Address: 6316 Marywood Drive

City: Wilmington State: NC Zip: 28409

Email: sam@equitaslp.com

#### REQUESTED TEXT AMENDMENT

Town Code Section(s) Requested to be Amended:  
Sections 40-73, 40-74 and 40-426(b) and (c)(7)

Please provide a general proposal for the amendment to the Town Code Section(s) stated above which you believe will result in improved regulations for all the residents of the Town of Carolina Beach

A proposal of the text amendment is attached. This proposal allows flexibility in dimensional requirements for the renovation of existing structures when the addition of infrastructure is for the addition/renovation of an elevator or fire suppression equipment.

This petition will be scheduled for the next possible meetings with the following boards: (1) Technical Review Committee, (2) Planning and Zoning Commission and (3) Town Council. The petitioner or a representative should be present at all meetings to answer any questions. Contact the Department of Planning and Development for a schedule of meeting times and submittal deadlines. All meetings are held at the Municipal Administration Building, 1121 N. Lake Park Boulevard, Carolina Beach, NC 28428. Petitioners will be informed of any changes in date, time, or location of meetings.

**I understand that the \$350 fee for review is nonrefundable.**

Signature of Petitioner: \_\_\_\_\_ Date: \_\_\_\_\_

Amendment Number: \_\_\_\_\_



### PETITION FOR A TEXT AMENDMENT

Petitions shall be submitted for review to the Department of Planning and Development located at 1121 N. Lake Park Blvd., Carolina Beach, NC 28428. Only complete petitions will be processed.

#### PETITIONER

Petitioner's Full Name: North Pier Holdings, LLC Phone #: (\_\_\_\_) - \_\_\_\_ - \_\_\_\_

Street Address: 6316 Marywood Drive

City: Wilmington State: NC Zip: 28409

Email: sam@equitaslp.com

#### REQUESTED TEXT AMENDMENT


Town Code Section(s) Requested to be Amended:  
Section 40-74 and Section 40-426(b) and (c)(7)

Please provide a general proposal for the amendment to the Town Code Section(s) stated above which you believe will result in improved regulations for all the residents of the Town of Carolina Beach

A proposal of the text amendment is attached. This proposal allows flexibility in dimensional requirements for the renovation of existing structures when the addition of infrastructure is determined by the zoning administrator to promote public health, safety, accessibility, and/or general welfare.

This petition will be scheduled for the next possible meetings with the following boards: (1) Technical Review Committee, (2) Planning and Zoning Commission and (3) Town Council. The petitioner or a representative should be present at all meetings to answer any questions. Contact the Department of Planning and Development for a schedule of meeting times and submittal deadlines. All meetings are held at the Municipal Administration Building, 1121 N. Lake Park Boulevard, Carolina Beach, NC 28428. Petitioners will be informed of any changes in date, time, or location of meetings.

**I understand that the \$350 fee for review is nonrefundable.**

Signature of Petitioner:   
Jeff O'Brien (Jan 2, 2024 14:37 EST)

Date: 02/01/2024






# Text Amendment Application

Final Audit Report

2024-01-02

Created:	2024-01-02
By:	Kate Nevins (kate@equitaslp.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAATkDHNOUUxNVZv1uhc6ybSlivzFneFjWD

## "Text Amendment Application" History

-  Document created by Kate Nevins (kate@equitaslp.com)  
2024-01-02 - 7:33:39 PM GMT
-  Document emailed to Jeff O'Brien (jobrienproperties@gmail.com) for signature  
2024-01-02 - 7:33:43 PM GMT
-  Email viewed by Jeff O'Brien (jobrienproperties@gmail.com)  
2024-01-02 - 7:37:49 PM GMT
-  Document e-signed by Jeff O'Brien (jobrienproperties@gmail.com)  
Signature Date: 2024-01-02 - 7:37:59 PM GMT - Time Source: server
-  Agreement completed.  
2024-01-02 - 7:37:59 PM GMT

## ATTACHMENT – 2: APPLICANT RECOMMENDED TEXT AMENDMENTS

### Building Height Text Amendments:

#### Sec. 40-73. - Dimensional standards for the various zoning districts.

- (9) ~~Yard~~ Requirements for existing structures exceeding maximum height regulations. ~~Yards may be increased as a condition of approval for structures exceeding maximum height requirements. Where~~ Multi-family structures in the R-1, MF, and T-1 zoning districts with more than ten (10) units are permitted to exceed the 50 feet maximum height regulation only when necessary for the installation or expansion of an elevator. ~~the following shall apply:~~
- ~~a. The minimum required front yard shall be increased by one foot for each foot in height exceeding the maximum height requirements.~~
  - ~~b. The minimum required side yard shall be increased by one foot cumulatively for each foot in height exceeding the maximum height requirements.~~

#### Sec. 40-74. Dimensional standards for lots and principal structures.

Zoning District	Primary Permitted Uses	Min. Lot Size	Min. Lot Width <sup>6</sup>	Min. Front Yard	Min. Rear Yard	Min. Side Yards* (Corner Lot — Min. 12.5 ft.) <sup>4</sup>	Residential Max. Density	Max. Height	Max. Lot Coverage
R-1	Single-Family Two-Family	5,000 sq. ft.	50 ft.	20 ft.	10 ft.	7.5 ft.	15 units/acre	50 ft. <sup>1,2</sup>	40%
R-1B	Single-Family	5,000 sq. ft.	50 ft.	20 ft.	10 ft.	7.5 ft.	8.7 units/acre	50 ft. <sup>1</sup>	40%
R-2	Single-Family	7,000 sq. ft.	70 ft.	25 ft.	10 ft.	7.5 ft.	6.2 units/acre	45 ft.	40%
R-3	Single-Family	12,000 sq. ft.	80 ft.	25 ft.	10 ft.	7.5 ft.	3.6 units/acre	40 ft.	40%
C	Conservation District Single-Family	80,000 sq. ft.	200 ft.	30 ft.	20 ft.	20 ft.	0.5 units/acre	50 ft. <sup>1</sup>	15%
MH	Manufactured Homes Single-Family/Two-Family	5,000 sq. ft.	50 ft.	20 ft.	10 ft.	7.5 ft.	15 units/acre	50 ft. <sup>1</sup>	40%
MX	Mixed Use	5,000 sq. ft.	50 ft.	20 ft.	10 ft. <sup>3</sup>	7.5 ft. <sup>3</sup>	17 units/acre	50 ft.	40%

Table footnotes:

1. Portions of this district may be located in an overlay district as shown on the Town's official zoning map and listed as part of this section. Maximum height of this district may be different than listed.
2. See section 40-73(9), **yard requirements**, for structures exceeding maximum height regulations.
3. Front yard setback is 50 feet if abutting a major thoroughfare.
4. Landscaping buffer requirements in article VI of this chapter may be greater than the required side yard setbacks.

Zoning District	Primary Permitted Uses	Min. Lot Size	Min. Lot Width <sup>6</sup>	Min. Front Yard	Min. Rear Yard	Min. Side Yards* (Corner Lot — Min. 12.5 ft.) <sup>4</sup>	Residential Max. Density	Max. Height	Max. Lot Coverage
CBD	Commercial Uses and Services, Entertainment	None	None	None	None, or same as abutting residential use or district	None, or same as abutting residential use or district	NA	50 ft. <sup>4</sup>	None
NB	Neighborhood Goods and Services	5,000 sq. ft.	50 ft.	20 ft.	10 ft.	7.5 ft.	8.7 units/acre	50 ft. <sup>2</sup>	40%
HB	Highway Commercial	10,000 sq. ft.	100 ft.	30 ft.	15 ft., or 20 ft. if abutting a residential district	10 ft.	NA	50 ft. <sup>2</sup>	60%
MB	Water-Oriented Businesses, Single-Family/Two-Family	10,000 sq. ft.	100 ft.	30 ft.	10 ft.	10 ft.	N/A <sup>6</sup>	50 ft. <sup>2</sup>	40%
T-1	Hotels and Motels 15 units or less	20,000 sq. ft.	100 ft.	20 ft.	10 ft. <sup>3</sup>	7.5 ft.	32 units/acre	50 ft. <sup>2</sup>	40%
	Hotels and Motels Greater than 15 units	25,000 sq. ft.	50 ft.				60 units/acre		
	Restaurants/Businesses	6,000 sq. ft.	50 ft.						
	Single/Multi-Family	6,000 sq. ft.	50 ft.				29 units/acre		
I-1	Industrial	None. (Min. district)	None	30 ft. <sup>3</sup>	None. *20 ft. if lot line abuts a	None *20 ft. if lot line abuts a	None	50 ft. <sup>2</sup>	None

		size: 5 acres)			residential lot or use <sup>3</sup>	residential lot or use <sup>3</sup>			
HOD	See underlying districts for use and dimensional requirements	N/A	N/A	N/A	N/A	N/A	N/A	45 ft.	N/A

Table footnotes:

1. Portions of this district may be located in an overlay district as shown on the Town's official zoning map and listed as part of this section. Maximum height of this district may be different than listed.
2. See section 40-73(9), **yard requirements**, for structures exceeding maximum height regulations.
3. Front yard setback is 50 feet if abutting a major thoroughfare.
4. In this district, the standard 50-foot building limitation may be exceeded for sprinklered structure and maximum building height shall be solely based on conditional zoning review.
5. Landscaping buffer requirements in article VI of this chapter may be greater than the required side yard setbacks.

**Lot Coverage Text Amendments:**

**Sec. 40-73. - Dimensional standards for the various zoning districts.**

(12) [Exceptions to lot coverage requirements. Multi-family structures with more than ten \(10\) units may exceed the maximum lot coverage requirements of the district to allow for structures to accommodate riser rooms for fire suppression equipment. Such additional lot coverage shall not exceed the minimum additional size required for a riser room by manufacturers specifications as designated by certified professional engineer.](#)

**Sec. 40-426. Reconstruction, maintenance, full or partial demolition and renovation of nonconforming situations.**

- (a) Except for fences, which are regulated by article VII of this chapter, nonconforming uses created by a change in regulations may continue to exist and shall be subject to all other provisions of this article.
- (b) Any building or structure for which normal repair, renovation, partial demolition and reconstruction or routine maintenance is proposed in an amount less than 50 percent of the current tax or certified appraised value of the building or structure, regardless of the reason for such repair or maintenance, shall be entitled to do so using the same building footprint and density with which the building or structure was originally constructed, provided the number of living units or nonresidential spaces are not increased and no additional nonconformities are created. [Notwithstanding the foregoing, lot coverage may exceed that of the original construction if the expansion of the lot coverage is directly attributable to the addition of improvements for fire suppression, including sprinkler systems.](#)

- (c) In the event normal repairs, renovations, full or partial demolition will result in new construction to a nonconforming structure exceeding 50 percent of the current tax or certified appraised value of the building or structure in any period of 12 consecutive months (except as otherwise allowed in subsection (e) of this section), regardless of the reason for such repairs, renovations, full or partial demolition or maintenance, the owner shall be entitled to undertake new construction using the same building density with which the building or structure was originally constructed, provided that the following provisions are met:
- (1) The number of living units or non-residential spaces are not increased.
  - (2) No additional nonconformities are created.
  - (3) All current minimum setbacks are met for the zoning district in which the structure is located.
  - (4) Maximum building height of the structure shall not exceed those of the zoning district in which it is located.
  - (5) Landscaping and buffer requirements shall meet the minimum requirements of the zoning district in which it is located.
  - (6) All parking requirements shall meet the minimum requirements of the district in which it is located.
  - (7) Lot coverage shall not exceed that of the original construction that is being replaced. Notwithstanding the foregoing, lot coverage may exceed that of the original construction if the expansion of the lot coverage is directly attributable to the addition of improvements for fire suppression, including sprinkler systems.



## ATTACHMENT – 3: STAFF RECOMMENDED TEXT AMENDMENTS

### Building Height Text Amendments:

#### Sec. 40-73. - Dimensional standards for the various zoning districts.

(9) ~~Yard~~ Requirements for existing structures exceeding maximum height regulations. ~~Yards may be increased as a condition of approval for structures exceeding maximum height requirements.~~ Where structures are permitted to exceed the 50 feet maximum height regulation for an elevator shaft the following shall apply:

- ~~a. The minimum required front yard shall be increased by one foot for each foot in height exceeding the maximum height requirements.~~
- ~~b. The minimum required side yard shall be increased by one foot cumulatively for each foot in height exceeding the maximum height requirements.~~
- a. No changes have been made to the building height since the original construction.
- b. Permitted for multi-family structures in the R-1, MF and T-1 zoning districts with Conditional Zoning approval.
- c. To access habitable floors only (not to access roof top decks or other uses).

### Lot Coverage Text Amendments:

#### Sec. 40-73. - Dimensional standards for the various zoning districts.

(12) Exceptions to lot coverage requirements. Multi-family structures may exceed the maximum lot coverage requirements of the district to allow for structures to accommodate riser rooms for fire suppression equipment. The following standards shall apply.

- a. Shall not exceed the minimum size required for a riser room by manufacturers specifications as designated by certified professional engineer.

Sec. 40-426. Reconstruction, maintenance, full or partial demolition and renovation of nonconforming situations.

Staff Recommends No change to this ordinance



## TOWN OF CAROLINA BEACH

1121 N. Lake Park Boulevard  
Carolina Beach, North Carolina 28428

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### PLANNING & ZONING COMMISSION MINUTES

Thursday, September 12, 2002  
7:00 P.M.

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ITEM #1 Roll Call: Those present were Chairman Jerry Johnson, John Keith, Bob Doetsch, and Jennifer Boozell. Troy Slaughter and Lank Lancaster were absent. Also present were Councilman Joel Macon; Rick Rogge, Board of Adjustments; Jane Daughtridge, Director of Planning and Development; and Pat Leisenring, Secretary of Planning and Zoning.

ITEM #2 Minutes for August 8, 2002 were approved on motion by Commissioner Keith, seconded by Commissioner Doetsch and voted unanimous.

ITEM #3 Request for Conditional Use Permit: East Carolina Pizza Huts, restaurant at 1401 N. Lake Park Blvd., Unit 32. Public hearing to relocate the takeout and delivery portion of Pizza Hut into the new shopping center. Proposal is for no seating at this location, no parking or other concerns. Must meet signage requirements. Staff recommends approval of conditional use permit.

A motion to open the public hearing was made by Commissioner Doetsch, seconded by Commissioner Keith and voted unanimous.

Those speaking for: Gary Bolton, Director of Operations, Pizza Hut Carolinas. Came to answer any questions, desire to relocate Pizza Hut as a takeout and delivery to a better location. Several sign logos were submitted with the request. Board questioned if applicant/staff were clear on signage regarding size and placement. They said yes. Mr. Bolton stated that the reason for changing to takeout and delivery was because it is financially difficult due to the seasonal nature of business to have a sit down restaurant, as the market grows they may need to bring the restaurant back.

Those speaking against: None

A motion to close the public hearing was made by Commissioner Boozel, seconded by Commissioner Keith and voted unanimous.

Commissioner Keith made a motion to recommend approval of the request for a conditional use permit by East Carolina Pizza Hut as submitted, seconded by Commissioner Boozel and voted unanimous.

ITEM #4 Request for Amendment to Zoning Ordinance – Article 3, Paragraph 7a. and Table 3.9.1, Footnote 1 (Height Restrictions). Jane Daughtridge stated that Mr. Davis is requesting an amendment to the ordinance to allow for greater height or at least living space within the currently allowed height requirements of 35 feet with an additional 10 feet for roof pitch. The additional 10 feet does not allow for living space, finished materials or heated space. Have a number of people who try to capture living space

in that 10 feet with various means. If 45% of the view is blocked anyway, maybe it doesn't make any difference what they're doing inside. Administratively it is very difficult to administer. Staff is in favor in making something simpler than what we have. Spoke with Brian Roberts, Fire Marshall/Fire Chief who had some concerns on anything unsprinklered beyond 50 feet due to complications with the ladder and electrical lines. He would prefer a maximum of 45 feet. Mr. Davis specified in his letter 45 or 50 feet. Staff spoke with Kure Beach, they're limit is 35 feet with a small proviso for mechanical equipment. Staff is in favor of anything that is safe but says this is the limit. Any unsprinklered system be allowed to build to 45 feet.

Commissioner Keith made a motion to open the public hearing, seconded by Commissioner Doetsch and voted unanimous.

Speaking for: Johnnie Davis, The Cape, owns property on Wilson Avenue and Federal Point Yacht Club. Stated that for years people have built to 45 feet with a roof pitch and finish it off after getting their CO. This is an uninspected type of structure, which may not be up to code. Allowing a maximum height of 45 ft. or 50 ft. to include chimneys, widow's walks, etc., would mean everything would go through the building inspections process and everyone would be building with the same rules. This would also simplify the planning and zoning job, inspections job and code enforcement.

Speaking against: None.

Commissioner Doetsch made a motion to close the public hearing, seconded by Commissioner Keith and voted unanimous.

Commissioner Keith suggested a maximum of 50 feet to include everything. Commissioner Doetsch recommended 50 feet as some areas have to allow for flood elevation. Commissioner Johnson recommended 50 feet with language that includes chimneys, walkways or pertinent structures and that is the maximum. Anything above 50 feet would have to have sprinklers and be reviewed and approved under a conditional use permit.

Commissioner Keith made a motion to recommend to Council to amend Zoning Ordinance – Article 3, Paragraph 7a. and Table 3.9.1, footnote 1 (height restrictions) to a maximum of 50 feet from the nearest adjacent grade, including roof pitch, living space, chimneys, decks, walkways or any other pertinent structure. Anything above 50 feet will require sprinkler systems and must be reviewed and approved under a conditional use permit. Seconded by Commissioner Boozel and voted unanimous.

ITEM #5 Non-Agenda Items.

a. Continued Review Appearance Standards Criteria for Variance – Ms. Daughtridge said that of the recommendations sent forward to Council, they had some doubts about the criteria for a variance and perhaps not realistic. Council asked that BOA and P&Z meet and come back with a recommendation for modifying those criteria. There was a lot of discussion at BOA meeting which included discussion of building standards, including the 15" vs. 12" overhang from Brian Roberts. Because the discussion couldn't quite come to a consensus, the result of the meeting was that P&Z would take up these criteria again. Item was taken off Council's agenda until P&Z had time to take another look at all of the issues, whether you wanted the criteria to remain the same or whether you wanted different criteria for variances that might be more useful or realistic. Primary issue is criteria for a variance. The 15" overhang also came up again because 12" is the industry standard, which was what P&Z originally recommended to Council. Commissioner Keith said he felt the majority of Council was upset with the criteria for a variance only. He feels the standards should be fair and good for the town with criteria not easily broken. Ms. Daughtridge said that in terms of the modular industry, which must be treated as stick built, companies that build

less expensive models don't tend to make 15" overhangs, whereas companies that make higher quality homes do. Her sense is that is where the 15" overhang came from to try and make sure that those higher quality modulares would be the modulares that came here.

Commissioner Johnson said that the overhang average was 8", which was why they came up with 12", which was then changed to 15". Rick Rogge said that from the Board of Adjustments standpoint their concern was not what the standards were but how to handle variances, what the criteria should be. He felt the board was confused on what changes needed to be made – needed some guidelines. Ms. Daughtride said the first criteria under question was regarding the devaluation of property issue and whether or not an appraisal of the new property was truly reflective of value impact on existing property – this was raised by the attorney. Issue needs to be reworded. A standard is set and is expected to be upheld except under very odd conditions. Councilman Macon feels that it is a bad ordinance, you shouldn't dictate architectural design – voted against the ordinance. Cited situation with Portside Subdivision, 75% of houses completed with 12" overhangs and were required to get a variance to finish the development. Feels the ordinance is too detailed. Ms. Daughtride feels that most of the variance requests are done, pretty much through the transition. Portside got a blanket variance for the remaining lots, there was no hardship issue on people already there, some financial impact. People wanting to go through the time and trouble of getting a variance to the appearance standards may not have a difficult time doing it. Mr. Rogge asked about having an Architectural Review Board as a potential solution. Councilman Macon said there used to be one for the Central Business District but they were essentially ignored and the board dissolved. Said he was asked to be at the meeting by the Mayor specifically for this subject.

Commissioner Johnson asked what criteria we are currently operating under. Ms. Daughtride stated that there will be no more variances until some criteria are in place. The BOA was allowed to process the last two variances established under the administrative criteria because they were in process. Council was asked if they had a problem with using the criteria on the Portside case until something was resolved because of the nature of the case and they didn't have a problem with that, but her sense of that allowance was that they didn't want to have any more go forward without some criteria. Reviewed appearance standards - requirement of 15" overhangs, excluding gutters, with discretion of gable ends; 6/12 roof pitch on majority of structure with allowance on porches and dormers; landscaping, shrubs were removed from initial recommendation – Councilman Macon said the Council felt that requirement would involve too much government. Commissioner Johnson asked how they could safeguard against minority modular homes from being built between two 1.5 million dollar homes? Councilman Macon stated that you cannot dictate taste, said he had a problem with the last two variance criteria. BOA discussed possibly changing the fifth one to 5%. Councilman Macon doesn't feel you would ever be able to meet the fourth criteria and #5, is not sure if it should be more or less. Ms. Daughtride stated that the criteria has to be applicable for a variance request for all of the standards, that's part of the difficulty.

Review of criteria for variance:

1. Deviation from the appearance standards will not be incompatible with the overall architectural scale and design of the neighboring properties. (*What defines area of neighboring properties? – 200 feet adjacent to property.*)
2. Deviation from the appearance standards will not impose hardship on neighboring properties such as quantifiable devaluation of property. The applicant must present evidence based on existing tax valuations and certified real estate appraisals to refute any such claims. (*Concerns are that tax valuations are not necessarily representative of market value; attorney is concerned about the certified real estate appraisals – couldn't really quantify devaluation of someone else's property by establishing a value for a different property. The thought process was that the new house would be appraised and compared to the tax values of surrounding property. Attorney had a problem with the language.*)
3. Deviation from the appearance standards is supported by a duly incorporated Homeowners' Association or by petition of support from a majority of the adjacent property owners.
4. Deviation from the appearance standards is necessary because of demonstrated safety concerns or natural hazard considerations. (*Board recommended removing this item from the criteria.*)

5. Deviation from the appearance standards is necessary to relieve unusual financial hardship (10% or more of the cost of the structure). *(Board recommended changing to 5%.)*

In addition, Board recommended coming up with different language for item 2 (Town Attorney recommendation) and requiring 2 out of 4 conditions. Board would like staff to set up special meeting for P&Z and BOA, either September 24<sup>th</sup> or 25<sup>th</sup> or October 1<sup>st</sup> or 2<sup>nd</sup> to prepare a resolution for Council.

- b. Board was given copies of the Hazard Mitigation Plan to look at strategies/policies and to review and make recommendations to discuss at next meeting.

- c. Commissioner Johnson asked if the Town was through with Canal Drive, asked about the street being raised 12" – 18". Work still going on, valves, etc.

- d. Board asked about sign ordinance. New intern will be quantifying the non-conforming signs to create a base. Will be sending a copy of the sign ordinance with the privilege license renewals next year as an informational item.

ITEM 6       Adjournment. Commissioner Doetsch made a motion to adjourn the meeting at 8:35 p.m., seconded by Commissioner Keith and voted unanimous.

Respectfully submitted,

Pat Leisenring, Secretary  
Planning and Zoning Commission

**MINUTES OF THE REGULAR MEETING  
OF THE TOWN COUNCIL  
TOWN OF CAROLINA BEACH**

*November 12, 2002*

The Town Council of the Town of Carolina Beach met in regular session on November 12, 2002 at 7:30 p.m. in the Council Room at the Municipal Administration Building, 1121 N. Lake Park Blvd., Carolina Beach, North Carolina. The following were present: Mayor, Ray Rothrock; Mayor Pro Tem, Dennis Barbour; Councilwoman, Pat Efir and Councilman, Joel Macon. Also present were Town Manager, Calvin R. Peck, Jr., and Town Clerk, Lynn N. Prusa. Councilman Doetsch was not present.

Mayor Rothrock called the meeting to order.

Mayor Rothrock made a motion to excuse Councilman Doetsch from the meeting. **MOTION CARRIED UNANIMOUSLY.**

***ADOPT THE AGENDA***

Mayor Pro Tem Barbour made a motion to adopt the agenda. **MOTION CARRIED UNANIMOUSLY.**

***RECOGNIZE INDIVIDUALS FOR THEIR SELFLESS ACTS OF HEROISM IN OCEAN RESCUE***

On October 5, 2002, a tragic incident occurred causing the death of one individual due to drowning while swimming in turbulent waters off Carolina Beach. Three young men voluntarily attempted to help this individual and his wife prior to EMS arriving. Fortunately, due to the heroic efforts of these young men, the victim's wife was successfully rescued. Councilwoman Efir recognized Sam Smith, Chase Blackburn, and Blake Kennedy and presented them with a Certificate of Appreciation for their "selfless act of heroism". Unfortunately, Blake Kennedy was not present to receive his certificate at the meeting.

***PUBLIC DISCUSSION***

There were no public comments.

***CONSENT AGENDA***

Mayor Pro Tem Barbour made a motion to approve the consent agenda as follows:

Approval of the Minutes:

Regular Meeting	September 14, 2002
Special Meeting	September 26, 2002
Regular Meeting	October 8, 2002

Approval of Budget Transfers and/or Amendments:

Clerk

Approve budget transfer for \$1,204.00 from account #104300.56 (Preventative Maintenance) to account #104100.16 (Legislative/Maintenance & Repair of Equipment) to cover unexpected maintenance and repair costs.

Approve budget transfer for \$2,474.27 from account #104300.56 (Preventative Maintenance) to account #104300.16 (Clerk/Maintenance & Repair of Equipment) to cover unexpected maintenance and repair costs.

Marina/Public Buildings

Approve budget transfer for \$34.00 from account #255500.16 (Maintenance and Repairs) into account #105000.03 (Public Buildings/Overtime) to cover employee payroll costs for making the necessary repairs to a transformer at the marina.

Set a public hearing date for December 10, 2002 at 7:30 p.m. or soon thereafter to amend the Budget Ordinance, Appendix "C" (Rates and Fees – Special Pick-ups).

Set a public hearing date for December 10, 2002 at 7:30 p.m. or soon thereafter to consider a request for a Conditional Use Permit at 1401 N. Lake Park Blvd., Unit 4D for a Chinese Restaurant.

Adopt Resolution No. 02-740, a Resolution of Intent to Close Public Street or Alley described as a 15' unnamed alley in the center of Block 5, Ocean Heights Subdivision and set a public hearing date for December 12, 2002.

Amend the Personnel Handbook, Article IX Employee Benefits, Section 13 - Direct Deposit to make payroll by direct deposit mandatory for all employees' salaries.

Adopt a Memorandum of Understanding for cooperative, comprehensive, and continuing transportation planning between area jurisdictions.

**MOTION CARRIED UNANIMOUSLY.**

***PUBLIC HEARING – REQUEST FOR A CONDITIONAL USE PERMIT TO RELOCATE PIZZA HUT DELIVERY UNIT RESTAURANT FROM ITS FORMER LOCATION TO 1401 N. LAKE PARK BLVD., UNIT 32 (SNOW'S CUT CROSSING SHOPPING CENTER)***

Jane Daughtridge, Planning & Development Director, explained that this is a Conditional Use Permit to relocate the Pizza Hut delivery unit to 1401 N. Lake Park Blvd., Unit 32 (Snow's Cut Crossing Shopping Center). She said that this proposal is for a delivery and take-out unit with no seating and all the public services are already in place. She advised that the Planning & Zoning Commission heard this request for a Conditional Use Permit on September 12, 2002. They recommend approval based on the findings that the proposal meets all the conditions and standards outlined in Article 14 of the Zoning Ordinance for Conditional Use Permits and that it is in compliance with the policies in the 1997 Land Use Plan.

The following conditions for approval are:

- (a) That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved;
- (b) That the use meets all required conditions and specifications;
- (c) That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and
- (d) That the location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the plan of development of Carolina Beach and its environs.

**Denial** should be directly related to one or more of the finds listed above (a-d). Reasons for denial must be specifically stated by Council.

Mayor Rothrock made a motion to open the public hearing. **MOTION CARRIED UNANIMOUSLY.**

There were no public comments.

Mayor Rothrock made a motion to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Mayor Pro Tem Barbour made a motion to approve the Conditional Use Permit to relocate Pizza Hut Delivery Unit Restaurant from its former location to 1401 N. Lake Park Blvd., Unit 32 (Snow's Cut Crossing Shopping Center) with no additional conditions other than the standard. **MOTION CARRIED UNANIMOUSLY.**

***PUBLIC HEARING – CONSIDER APPROVAL OF 3% ROOM OCCUPANCY TAX (ROT) IN COMPLIANCE WITH HOUSE BILL 1707 (SESSION LAW 2002-138)***

Mayor Rothrock stated that we have worked on this for three years and the beach communities have worked to get an additional 3% Room Occupancy Tax (ROT) in order to use that money in support of tourism. He explained that this has gone through the legislators and they have passed it so now the communities have the opportunity to put it in place. He said that Carolina Beach is the first to consider this because we are the first to meet. Further, Mayor Rothrock continued by saying that the New Hanover County Commissioners have voted unanimously to form a Tourism Development Authority (TDA). The new authority will take the place of the existing Cape Fear Coast Convention Center and Visitor's Bureau (CVB) and a new board of directors will be elected based on nominations from local elected officials to fill those positions with representatives. He said the new CVB will become the new TDA and the money collected will go through TDA and disbursed to the beach communities. Mayor Rothrock said that for the last 39 months, we have been averaging out the money that has come into Carolina Beach and we would receive approximately \$305,000 over a 5-month period beginning February to the end of June. In addition, Mayor Rothrock explained that 50% of that would be approximately \$102,000 and we have thoughts that most of that money would go toward funding the lifeguard salaries or other infrastructure for tourists.

Mayor Rothrock made a motion to open the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Lawrence Huhn, resident of 715 Carolina Beach Avenue North and owner of the Bed/Breakfast Beacon House, asked if this is the time to stick on us another tax. He feels it is unfair for one industry to carry such a burden because tourists visit restaurants, fishing boats, retail stores, gas stations, park in the parking lots, etc. and the lodging industry is not the only one that benefits from tourism.



Judith Grizzel, representative for the CVB, said the Board of Directors for the CVB supported the ROT for the county as a whole and as of January 1, 2003, we will become New Hanover County Tourism Development Authority. Ms. Grizzel announced that the positions for the board will be advertised this week and a new board of directors will be appointed.

Robert Vitale, resident of 107 Summersalt Lane and rental property owner at Atlantic Towers, believes that the 3% ROT increase will not be good for Carolina Beach because it is going to drive our revenues down. He explained that it might not happen the first year, but when people come and find out about the additional tax, they are going to shop around and find a cheaper beach to vacation. He also feels that that one industry should not support this infrastructure. It should be spread across on all the businesses of Carolina Beach, not just hotels/motels.

Mayor Rothrock added that the revenue for the ROT does not pay for all those services mentioned because some of that money goes into the General Fund so not one industry is paying for a sole service. In addition, Mayor Rothrock said the town received a letter from Joe Coen, resident and business owner in Carolina Beach. Mayor Rothrock read the letter aloud from Mr. Coen. Mr. Coen does not feel that the additional 3% ROT would take business away from Carolina Beach and believes that the new tax and the new TDA will act in the best interest of all the people in Carolina Beach.

Councilwoman Efird made a motion to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Councilwoman Efird made a motion to approve Resolution No. 02-742 to enact an additional 3% Room Occupancy Tax (Exhibit 1). **MOTION CARRIED UNANIMOUSLY.**

***PUBLIC HEARING – CONSIDER AN AMENDMENT TO ZONING ORDINANCE, ARTICLE 3, PARAGRAPH 7A AND TABLE 3.9.1, FOOTNOTE 1. (HEIGHT RESTRICTIONS)***

Ms. Daughtridge, Planning & Development Director, reviewed the staff memorandum submitted concerning the amendment to the Zoning Ordinance, Article 3, Paragraph 7A and Table 3.9.1. Footnote 1 (Height Restrictions). She explained that the Planning & Zoning Commission began a discussion on the existing height restriction of 35 feet with an additional 10 feet allowed for roof pitch. Currently, the requirement does not allow for heated space above 35 feet and there is speculation that owners routinely finish the additional space into a living area later. At their August meeting, these discussions raised the question of whether or not it mattered what took place in the additional 10 feet since the total structure created the total obstruction for the surrounding area without regard to the inside activities. It was noted that with the new appearance standards, the issue of roof pitch has taken on its own identity.

In the interim, Ms. Daughtridge advised that the town had received a request from Mr. Johnnie Davis to amend the ordinance to allow for an increase in maximum height from the current 35 feet + 10 feet to a total height standard of 45 or 50 feet, without regard to inside finishes. She further explained that at the August meeting, the current rule is difficult to administer and people try to get around it all the time and staff would prefer to see a definite limit beyond which nothing can be built — not chimneys, antenna or other embellishments — and not leave so many variables over which to argue.

In addition, Ms. Daughtridge said that they received input from the Fire Chief and they suggested that for non-sprinklered structures the town should not consider allowing residential structures to go beyond an absolute maximum of 50 feet. The residential height restriction in Kure Beach is currently 35 feet with possible exceptions for domes, spires, cooling towers and other appurtenant features. This issue is addressed in the 1996 Land Use plan, which states that the town at that time was seeking to “retain its original character as a ‘low profile,’ family-oriented beach community.” The plan noted that as height increases, density also increases, which results in increased demand on public systems. At the time, the town had limitations on

water supply and wastewater treatment capacity such that limiting height was “well justified.” In situations where the height was allowed to exceed 35 feet, there was an additional setback requirement of 1 foot per 1 foot of additional height. Ms. Daughtridge said that the Planning & Zoning Commission heard this item at its September 12, 2002 meeting and they recommend amending the ordinance as follows:

Allow total maximum height of 50 feet for unsprinklered structures. Requests for heights beyond 50 feet (allowed only for sprinklered structures) must be approved under conditional use permits.

Councilman Macon made a motion to open the public hearing. **MOTION CARRIED UNANIMOUSLY.**

There were no public comments.

Mayor Rothrock made a motion to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Mayor Pro Tem Barbour made a motion to adopt Ordinance No. 02-523 to allow total maximum height of 50 feet for unsprinklered structures and requests for heights beyond 50 feet (allowed only for sprinklered structures) must be approved under Conditional Use Permits (Exhibit 2). **MOTION CARRIED UNANIMOUSLY.**

***OLD BUSINESS CONTINUED “ACTION ONLY” – CONSIDER AMENDMENTS TO APPENDIX A ZONING, ARTICLE 18 NON-CONFORMING SITUATIONS***

Ms. Daughtridge, Planning & Development Director, said that the Planning & Zoning Commission is going to take up this issue of amending Appendix A Zoning, Article 18 Non-Conforming Situations on Thursday, November 14, 2002 as part of a larger discussion that has grown out of a joint meeting with Council concerning bars/taverns. She advised that Council is free to take action on this now or set it aside and wait to hear what recommendations come from the Planning & Zoning Commission.

Mayor Rothrock asked if the Planning & Zoning Commission would have their recommendations to them before the December meeting? Ms. Daughtridge feels that this is a large issue and it might take a couple of meetings. Mayor Rothrock suggested that Council move this item to January or February. Ms. Daughtridge stated that this is a complicated issue and we do not want to rush it. Mayor Rothrock made a motion to set a public hearing date for January 14, 2003 to consider the amendments to Appendix A Zoning, Article 18 Non-conforming Situations and to re-advertise it. **MOTION CARRIED UNANIMOUSLY.**

***PROJECTS UPDATE***

Steve Pagely, Public Utilities Director, gave a brief update concerning all of the town’s projects. He began by saying that the I/I project is coming to completion, but there are still some inspections to be done on the storm drain work. He said the water tank on Alabama Avenue is moving forward with no problems and all the filters are in. Mr. Pagley said we are continuing to work on the police station and all the grade work is in. They are ready to put down the flooring and have installed the generator. Mayor Rothrock asked about the duct bills? Mr. Pagley said that all the duct bills are in place except for on Sand Dollar Lane.

In addition, Mr. Peck, Town Manager, said that there are some change orders to be approved in continuing with the Police and Municipal Building contract. He reviewed the 7 change orders to Summit Companies Police and Municipal Building contract as follows:

CO #34	Construct Ground Sign	+\$16,142.00
CO #35	Complete duct installation to “Holding Cells”	+\$ 1,416.70

CO #36	Installation of Washing Machine Box in Rm. 127	+\$ 1,162.70
CO #37	Install carrier lavatory supports at Rms. 140 & 141	+\$ 417.27
CO #39	Additional landscaping around equipment at North end of Bldg.	+\$ 1,002.07
CO #40	Addition of Multi-colored coating to Visitors' Center	+\$ 1,134.24
CO #41	Elec. changes for relocation of outlets from behind cabinets/equip.	+\$ 489.00
<b>TOTAL ADD</b>		<b>+\$21,763.98</b>

Original Contract Amount	\$4,372,243.00
Amount of Previous Change Orders	\$ (\$17,910.34)
Amount of These Change Orders	\$ 21,763.98
Revised Contract Amount	\$4,376,097.64

Mr. Peck recommended that Council approve Change Orders #34, 35, 36, 37, 39, 40 and 41.

A motion was made by Councilman Macon to approve Change Orders #34, 35, 36, 37, 39, 40 and 41.  
**MOTION CARRIED UNANIMOUSLY.**

***ITEMS NOT ON THE AGENDA***

Brian Roberts, Fire Chief, announced that the open house for the new fire department building will be on December 14, 2002 from 10:00 a.m. to 3:00 p.m. Mayor Rothrock said he is working on a list of people to invite and if he missed someone to invite to let him know.

Mark Dunford, Police Chief, announced that the police department would be deleting their non-emergency telephone number. Charlie Grissom, Chairman of the Police Advisory Committee, said that as of the first of the year, the police telephone number, 458-8200, will be deleted, but it would be put on a rotor automated system telling them to contact 911 if it is an emergency. In addition, Mr. Grissom said we will have three additional numbers that will be on the automated system and given out to people who call about town services. Mr. Grissom continued by stating that we have to get the new telephone number out to the public and we could print a decal to disseminate to residents, citizens, businesses, etc. Mayor Rothrock feels we could get the new telephone number out to citizens through the media, town service and distributing the decals to the school. Chief Dunford mentioned that we have an account with Fairways Billboards and we will be advertising the new number for two months on the northernmost billboard. Also, it will be listed on the water/sewer bills next month. Mr. Grissom feels that we should put the new emergency number that will be 911 and the new non-emergency number on the decal.

Mayor Rothrock mentioned that he and Chief Dunford would be attending a meeting at Brunswick Nuclear Plant for a training exercise on Tuesday, November 19, 2002. He suggested that Chief Dunford schedule a tour of the New Hanover County 911 Center while they're downtown.

Ms. Daughtridge gave an update on the CVS project. She said that the building is complete, but they still have some roadwork improvements to do and it probably won't open until the first of the year. In addition, she advised that one of the projects that we have given to our UNCW student is to try to help us get an inventory of non-conforming signs. Recently, a letter was sent out to approximately 30 properties that have signs and were either not permitted in the file or known to be non-conforming. Ms. Daughtridge said that there are many others that are in conjunction with some things that are permitted, but they might need to do some maintenance or other issues and that may take some more research. She explained that we sent these properties a sign permit application and advised them that there is no fee to apply for a sign permit. We have

requested them to complete the application to give us the size of their sign and other information and if they do not respond then we will follow-up with a phone call and go out and measure.

Mayor Rothrock mentioned that we would need to make recommendations to the county as to who should serve on the TDA and represent Carolina Beach. He said that the representatives must serve and represent Carolina Beach under a certain category and/or capacity such as a hotel/motel owner, owner/operator of a restaurant, etc. Mayor Rothrock suggested that if anyone was interested, they should fill out an application and turn it into to the town then the Council could review the applications and make a recommendation to the county commissioners.

Mayor Rothrock advised that there would be a Lower Cape Fear Program Annual Report given on Thursday evening, November 21, 2002 and he plans to attend.

Mr. Peck reminded Council that the next workshop is next Thursday, November 21, 2002 at 5:00 p.m. In addition, he said he would be attending the North Carolina Shore & Beach Preservation meeting November 18, 2002 and November 19, 2002.

Al Clyburn, Town Attorney, requested that Council go into closed session concerning various litigation matters.

Mayor Rothrock made a motion to go into closed session concerning litigation matters. **MOTION CARRIED UNANIMOUSLY.**

Mayor Rothrock made a motion to return to open session. **MOTION CARRIED UNANIMOUSLY.** Mayor Rothrock advised the public of the closed session discussion. No one from the public was present.

Mayor Rothrock made a motion that the Town of Carolina Beach approve the requested easement and acknowledgement of rights concerning the 48 acres in the northern section of Carolina Beach by Spinnaker Pointe Homeowners' Association and Oceana Homeowners' Association. **MOTION CARRIED UNANIMOUSLY.**

### **ADJOURNMENT**

There being no further business, Councilwoman Efirid made a motion to adjourn. **MOTION CARRIED UNANIMOUSLY.** The meeting adjourned at 8:40 p.m.

Respectfully submitted,



Lynn N. Prusa  
Town Clerk

APPROVED: 12-10-02

EXHIBIT 1



**RESOLUTION NO. 02-742**

***A Resolution of the Town Council of the Town of Carolina Beach, NC  
in Support of the Amendments to  
GS 160A-215 Uniform Provisions for Room Occupancy Taxes***

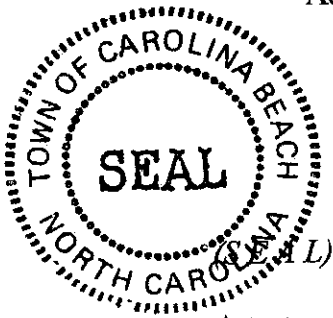
**WHEREAS**, the Town Council of the Town of Carolina Beach by an act of the General Assembly, Session Law 2002-138, is authorized to levy room occupancy taxes;

**WHEREAS**, a room occupancy tax may only be levied by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto;


**WHEREAS**, in compliance with G.S. 160A-215, a public hearing was held on November 12, 2002;

**NOW, THEREFORE, BE IT RESOLVED**, that the Town Council of the Town of Carolina Beach, hereby levies a 3% room occupancy tax on short term rentals within the town limits of Carolina Beach, effective February 1, 2003.

Adopted this 12<sup>th</sup> day of November, 2002.



  
Ray P. Rothrock, Mayor

Attest:   
Melinda N. Prusa, Town Clerk

**ORDINANCE NO. 02-523****AN ORDINANCE AMENDING APPENDIX A ZONING ORDINANCE,  
ARTICLE 3 ZONING DISTRICT REGULATIONS,  
SEC. 3.9 DIMENSIONAL STANDARDS FOR THE VARIOUS  
ZONING DISTRICTS**

The Town Council of the Town of Carolina Beach hereby amends Appendix A Zoning District, Article 3 Zoning District Regulations, Section 3.9 Dimensional Standards for the Various Zoning Districts, as follows:

**3.9. Dimensional Standards for the Various Zoning Districts.**

(a) *Dimensional Standards Tables.* Immediately following the text below, are two tables which set forth the required area and dimensional standards associated with each district. The two tables are:

***Table 3.9.1 Dimensional Standards for Lots and Principal Structures******Table 3.9.2 Dimensional Standards for Accessory Structures***

(b) *Other Special Dimensional Standards.* In addition to the dimensional standards set forth in Tables 3.9.1 and 3.9.2, the following special dimensional standards are established:

- (1) *Corner lots.* Except within the CBD and NB districts, all corner lots not less than twelve and one half (12½) ft. on side street. Accessory structures shall also be subject to this requirement.
- (2) *Front yards on through lots.* On through lots, the minimum front yards for the respective zoning districts shall apply wherever such lot(s) have frontage on a street.
- (3) *Sight distance at intersections.* On corner lots, no planting, fence, wall, sign or structure shall obstruct the vision more than 3 ft. in height within a triangular area formed by 30 ft. measured along the intersecting streets rights of way and joined together by a connecting straight line. Structures deemed essential for public utilities, as determined by the Public Works or Public Utilities Director, may be exempt.
- (5) *Reduction of required lot area.* Where lots abut the estuarine and/or ocean tidal waters, as defined in Article 23, and where lot depth has been lost due to the encroachment of such waters, making such lot area non-conforming to the zoning district requirements, the existing lot area may be considered conforming to meet the minimum lot area requirements of the zoning district in which located. However, the front and side yards of the zoning district shall apply. Lots which have lost area due to estuarine and ocean tidal waters or Carolina Beach Erosion Control and Hurricane Wave Protection Projects may be developed in accordance with all applicable permitted uses of the zoning district in which located, provided that the actual lot area extending to the Carolina Beach Building Line or Kure Beach's Beach Re-nourishment Easement Line shall be utilized when computing the density for multi-family dwellings per lot. The Zoning Administrator shall make the determination of actual lot area.
- (6) *Allowable intrusions into required yard setbacks for residential zones.* Architectural embellishments such as roof overhangs, elevated heat pumps, heating and air-conditioning units, cantilevered balconies for decks, and bay or box windows may intrude into the required setbacks by no more than two and one-half (2½) feet. Only the toe or termination of a set of stairs may encroach two and one-half (2½) feet beyond the required setback. It is not the intent of this

provision to allow or encourage structures to overbuild on lots but, rather, to accommodate special situations relative to the second-floor and other upper floors, or structures.

(7) *Height regulations:*

- a. Structures shall not exceed ~~thirty-five (35)~~ **fifty (50)** feet in height in conjunction with Section 3.9 (8)a-d.
- b. Any proposed structure(s) which exceeds ~~thirty-five (35)~~ **fifty (50)** feet in height **shall be equipped with sprinkler fire suppression systems, and** plans of said proposal shall be submitted for review and approval as a Conditional Use Permit in compliance with the applicable process and with Section 3.9(9).

(8) *Exceptions to height requirements.* Exceptions to the building heights are as follows:

- ~~a. The exterior of parapet walls and cornices not more than five (5) feet above the maximum height established within the zoning district.~~
- ~~b. Appurtenant structures on roofs (skylights, domes, flagpoles, cooling towers and structures for housing elevator equipment, stairways, tanks, fans, air conditioning or similar equipment required for the operation or maintenance of buildings) may be erected above the maximum height requirements if placed on the roof of the buildings to which the such structure is of appurtenant.~~
- ~~c. Freestanding chimneys, tanks, smokestacks and similar structures which are structurally independent of the building located directly upon the land and are a necessity to the operation of the building, as determined by the building inspector, may be erected above the maximum height requirements subject to the provisions of paragraph (b)(2) above.~~
- a. Regulations, including height limitations, for cellular communication towers and similar such structures are set forth in Article 12 Development Standards for Particular Uses.

(9) *Yard Requirements for structures exceeding maximum height regulations.* Yards may be increased as a condition of approval for structures exceeding maximum height requirements, where structures are permitted to exceed the ~~thirty-five (35)~~ **fifty (50)** feet maximum height regulation, the minimum required yard ~~shall may~~ be increased by one (1) foot for each foot in height exceeding the maximum height requirements.

# Section 3.9.1 Dimensional Standards for Lots and Principal Structures

## Dimensional Standards for Lots and Principal Structures, Residential Districts

Zoning District	Primary Permitted Uses	Min. Lot Size	Min. Lot Width <sup>6</sup>	Min. Front Yd.	Min. Rear Yard	Min. Side Yards* (Corner Lot – Min. 12.5 ft)	Performance Residential Max. Density	Max. Height	Max. Lot Coverage
R-1	Single-Family Duplex	5,000 sq.ft.	50 ft.	20 ft.	10 ft.	7.5 ft.	17 units/acre*	50 ft. <sup>1</sup>	40%
R-1B	Single Family	5,000 sq. ft.	50 ft.	20 ft.	10 ft.	7.5 ft.	8.7 units/acre	50 ft. <sup>1</sup>	40%
R-2	Single-Family	7,000 sq.ft.	70 ft.	25 ft.	10 ft.	7.5 ft.	6.2 units/acre	50 ft. <sup>1</sup>	40%
R-3	Single-Family	12,000 sq.ft.	80 ft.	25 ft.	10 ft.	7.5 ft.	3.6 units/acre	50 ft. <sup>1</sup>	40%
C	Conservation District Single Family	80,000 sq.ft	200 ft.	30 ft.	20 ft.	20 ft.	0.5 units/acre	50 ft. <sup>1</sup>	15%
MH	Manufactured Homes Single-Family/Duplex	5000 sq.ft.	50 ft.	20 ft.	10 ft.	7.5 ft.	8.7 units/acre	50 ft. <sup>1</sup>	40%
MF	Multi-Family Single-Family/Duplex	5,000 sq.ft.	50 ft.	10 ft.	10 ft.	7.5 ft.	17 units/acre	50 ft. <sup>2</sup>	40%
MX	Mixed Use	5,000 sq.ft.	50 ft.	20 ft.	10 ft. <sup>3</sup>	7.5 ft. <sup>3</sup>	17 units/acre*	50 ft. <sup>1</sup>	40%

## Dimensional Standards for Lots and Principal Structures, Other Districts

Zoning District	Primary Permitted Uses	Min. Lot Size	Min. Lot Width <sup>5</sup>	Min. Front Yard	Min. Rear Yard	Min. Side Yards	Max. Density	Max. Height	Max. Lot Coverage
CBD	Commercial Uses Services, Entertainment	None	None	None	None, or same as abutting residential use or district. <sup>3</sup>	None, or same as abutting residential use or district. <sup>3</sup>	NA	50 ft. <sup>2</sup>	None
NB	Neighborhood Goods and Services	None	None	30 ft.	None, or same as abutting residential use or district. <sup>3</sup>	None, or same as abutting residential use or district. <sup>3</sup>	NA	50 ft. <sup>1</sup>	None
HB	Highway Commercial	10,000 sq.ft.	100 ft.	30 ft.	20 ft. <sup>3</sup>	10 ft. <sup>3</sup>	NA	50 ft. <sup>1</sup>	60%
MB	Water-Oriented Businesses, Single-Family, Duplex	10,000 sq.ft.	100 ft.	30 ft.	10 ft. <sup>3</sup>	10 ft. <sup>3</sup>	NA	50 ft. <sup>1</sup>	40%
T-1	Hotels and Motels Restaurants/Businesses Single/Multi-Family	25,000 sq.ft. 6,000 sq.ft. 6,000 sq.ft.	100 ft. 50 ft. 50 ft.	20 ft.	10 ft. <sup>3</sup>	10 ft. <sup>3</sup>	60 units/acre 29/acre	50 ft. <sup>2</sup>	40%
I-1	Industrial	None. (Min. district size: 5 acres )	None.	30 ft. <sup>4</sup>	None. *20 ft. if lot line abuts a residential lot or use. <sup>3</sup>	None *20 ft. if lot line abuts a residential lot or use. <sup>3</sup>	None	50 ft. <sup>2</sup>	None

### Table Footnotes:

- 1 Maximum height thirty-five (50) ft. for all unsprinklered structures, including all portions of the structure and appurtenances, plus an additional ten (10) ft. for roof pitch only. No portion exceeding height may be utilized as livable area. Height limits in this district are fixed and may not be increased through issuance of a conditional use permit.
- 2 In this district, the standard thirty-five (50) foot building height limitation may be exceeded for sprinklered structures upon review and approval of a conditional use permit. As a minimum requirement for a conditional use permit, any structure or building, the height of which exceeds thirty-five (35) ft., shall be set back an additional one (1) foot on all sides for every one (1) ft. of height above thirty-five (35) ft.
- 3 Where a non-residential use abuts a residential district or existing residence, a buffer shall be installed in the required setback area in accordance with the requirements of Article 8.
- 4 Front yard setback is fifty (50) feet if abutting a major thoroughfare.



## Section 3.9.2 Dimensional Standards for Accessory Structures

**(a) General Standards for Accessory Structures in Residential Districts.**

- (1) *Maximum Height of Accessory Structure:* One (1) Story
- (2) *Setbacks:* Accessory structures shall not be permitted within any required front or side yard, or within five (5) feet of the rear lot line.

**(b) Table 3.9.2 Lot Coverage Standards for Accessory Structures in Residential Districts**

(1) *Within Residential (R) Districts and the MX-1 Mixed Use District.*

Accessory structures shall conform to the following standards in the designated zone districts:

Zoning District	Lot Size	Maximum Allowable Lot Coverage of Structures	40% Maximum Allowable Lot Coverage	75% of Max. Allowable Lot coverage allocated to Single-Family Dwelling	25% of Maximum Allowable Lot Coverage allocated to Accessory Building
R-1	5,000 sq.ft.	40%	2,000 sq.ft.	1,500 sq.ft.	500 sq.ft.
R-1B	5,000 sq. ft.	40%	2,000 sq.ft.	1,500 sq.ft.	500 sq.ft.
R-2	7,000 sq. ft.	40%	2,800 sq. ft.	2,100 sq. ft.	700 sq. ft.
R-3	12,000 sq.ft.	40%	4,800 sq.ft.	3,600 sq.ft.	1,200 sq.ft.
C	80,000 sq.ft	6%	4,800 sq.ft.	3,600 sq.ft.	1,200 sq.ft.
MH	5,000 sq.ft.	40%	2,000 sq.ft.	1,500 sq.ft.	500 sq.ft.
MF	5,000 sq.ft.	40%	2,000 sq.ft.	1,500 sq.ft.	500 sq.ft.
MX	5,000 sq.ft.	40%	2,000 sq.ft.	1,500 sq.ft.	500 sq.ft.

**(c) Standards for Accessory Structures in Non-Residential Districts**

(1) *Within the MB-1 Marina Business District:*

Accessory structures, in conjunction with single-family lots only, shall not exceed one (1) story in height and shall not be permitted within any required front or side yard, nor within five (5) feet of any lot line. Accessory structures may occupy no more than thirty (30)% of the area of the required rear yard.

(2) *Within the T-1 Tourist District:*

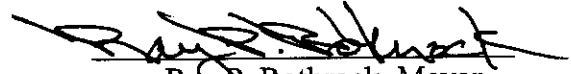
Accessory structures shall not exceed one (1) story in height. Accessory structures shall not be permitted within any required front or side yard, or within five (5) feet of any lot line. Accessory structures may occupy no more than thirty (30%) percent of the area of the required rear yard.


**(d) Lot Coverage Standards for Swimming Pools in all zoning Districts**

Private swimming pools and their associated decks, fencing, and equipment are exempted from the lot coverage requirements of this ordinance.

Adopted this 12<sup>th</sup> day of November, 2002.



  
Ray B. Rothrock, Mayor

Attest:   
Melinda N. Prusa, Town Clerk



# Text Amendment to Amend Lot Coverage and Height Limitations

- Amend Chapter 40 Sec 40-73 – Dimensional standards for the various zoning districts
- Amend Chapter 40 Sec. 40-74. Dimensional standards for lots and principal structures
- Amend Chapter 40 Sec. 40-426. - Reconstruction, maintenance, full or partial demolition and renovation of nonconforming situations.

Applicant: North Pier Holdings, LLC

# Background

- Applicant: North Pier Holdings, LLC.
- The Applicant owns and is currently renovating two buildings at 1800 Canal Dr.
- Reason for the proposed text amendments:
  - The applicant has added a 4<sup>th</sup> story and proposes relocating an elevator to serve the 4<sup>th</sup> story (Height Amendments)
  - The applicant is adding a sprinkler system to the buildings which requires the addition of a riser room (Lot Coverage Amendments)

# Proposed Text Amendments

## Building Height Text Amendments:

- Sec. 40-73. - Dimensional standards for the various zoning districts. – (9)
- Sec. 40-74. Dimensional standards for lots and principal structures.
  - Allows the height of a structure to exceed the maximum height allowed by the zoning district for the addition of an elevator if they meet the following:
    - Multi-family structures with more than ten (10) units,
    - Located in the R-1, MF, and T-1 zoning districts.

## Lot Coverage Text Amendments:

- Sec. 40-73. - Dimensional standards for the various zoning districts – (12)
- Sec. 40-426. Reconstruction, maintenance, full or partial demolition and renovation of nonconforming situations.
  - Allows an exception to exceed the maximum lot coverage for all zoning districts for the addition of a riser room if they meet the following:
    - Multi-family structures with more than ten (10) units
    - Riser room size would be determined by the manufacturer spec sheets and must be certified by a professional engineer.

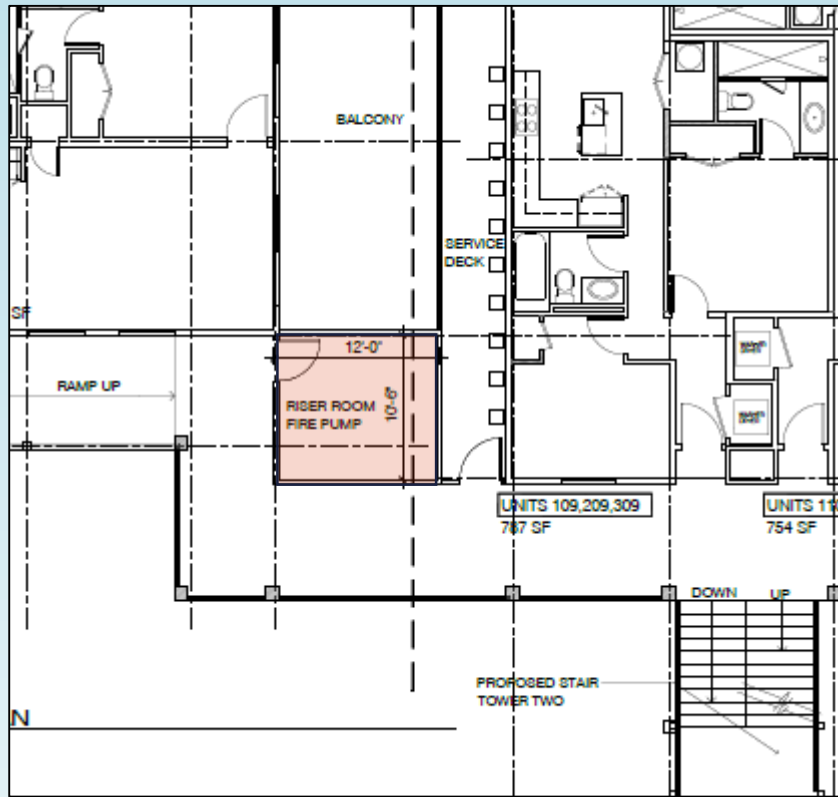
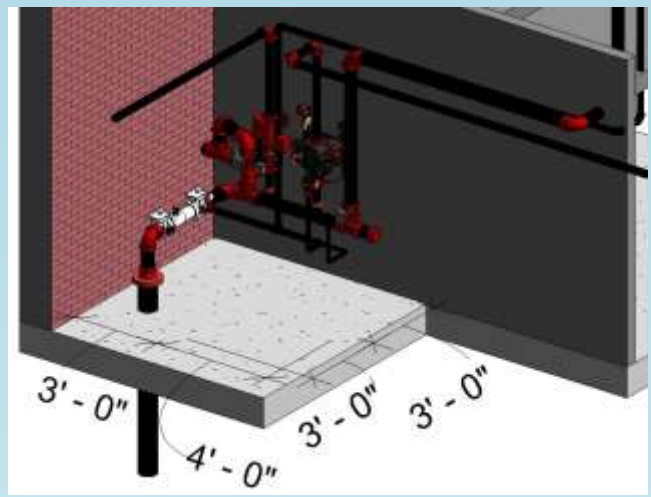
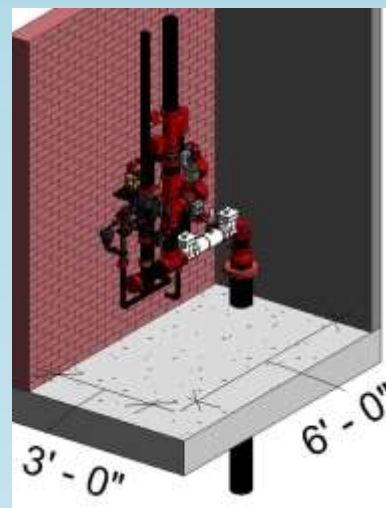
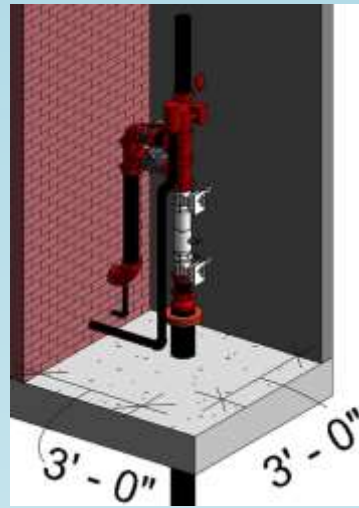
# Building Height for Elevator

Item 11.

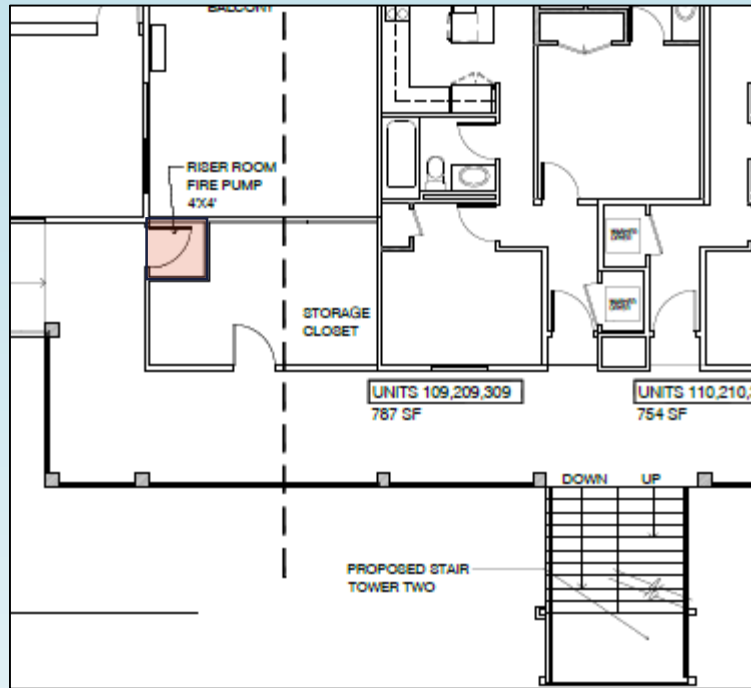


# Riser Room – Lot Coverage

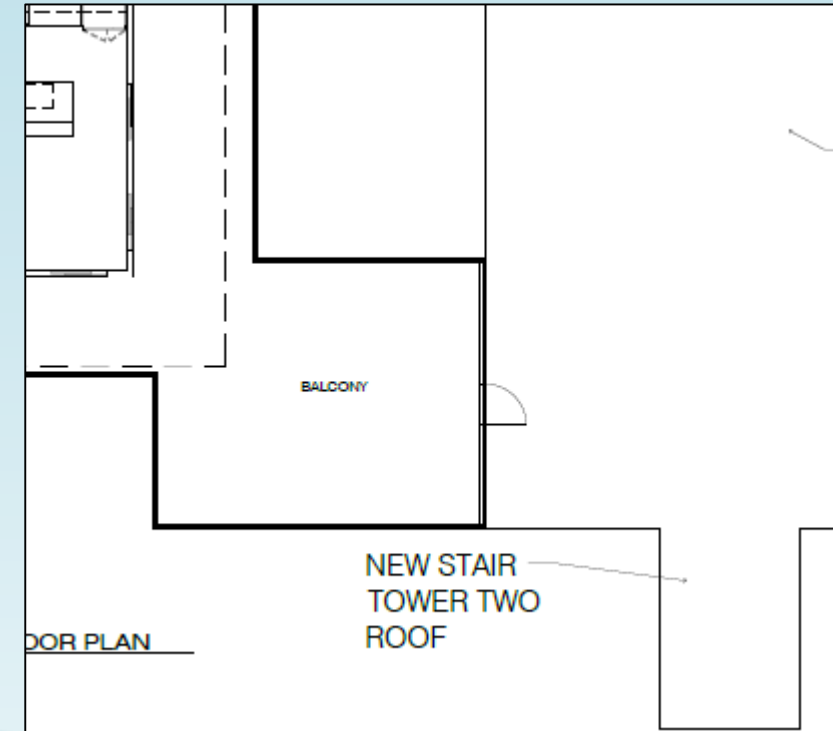
Item 11.



First Floor – Riser room Equipment



2<sup>nd</sup> & 3<sup>rd</sup> Floor – Small area for pipes. Remaining area for storage closet.



Penthouse 4<sup>th</sup> Floor – Gets used as a balcony

# Building Height: Amend Chapter 40 Sec. 40-73. - Dimensional standards for the various zoning districts.

(9) ~~Yard~~ Requirements for existing structures exceeding maximum height regulations. ~~Yards may be increased as a condition of approval for structures exceeding maximum height requirements. Where~~ Multi-family structures in the R-1, MF, and T-1 zoning districts with more than ten (10) units are permitted to exceed the 50 feet maximum height regulation only when necessary for the installation or expansion of an elevator. ~~the following shall apply:~~

- ~~• a. The minimum required front yard shall be increased by one foot for each foot in height exceeding the maximum height requirements.~~
- ~~• b. The minimum required side yard shall be increased by one foot cumulatively for each foot in height exceeding the maximum height requirements.~~



# Building Height: Amend Chapter 40 - Sec. 40-74.

## Dimensional standards for lots and principal structures

Zoning District	Primary Permitted Uses	Min. Lot Size	Min. Lot Width <sup>6</sup>	Min. Front Yard	Min. Rear Yard	Min. Side Yards* (Corner Lot—Min. 12.5 ft.) <sup>4</sup>	Residential Max. Density	Max. Height	Max. Lot Coverage
R-1	Single-Family Two-Family	5,000 sq. ft.	50 ft.	20 ft.	10 ft.	7.5 ft.	15 units/acre	50 ft. <sup>1, 2</sup>	40%
R-1B	Single-Family	5,000 sq. ft.	50 ft.	20 ft.	10 ft.	7.5 ft.	8.7 units/acre	50 ft. <sup>1</sup>	40%
R-2	Single-Family	7,000 sq. ft.	70 ft.	25 ft.	10 ft.	7.5 ft.	6.2 units/acre	45 ft.	40%
R-3	Single-Family	12,000 sq. ft.	80 ft.	25 ft.	10 ft.	7.5 ft.	3.6 units/acre	40 ft.	40%
C	Conservation District Single-Family	80,000 sq. ft.	200 ft.	30 ft.	20 ft.	20 ft.	0.5 units/acre	50 ft. <sup>1</sup>	15%
MH	Manufactured Homes Single-Family/Two-Family	5,000 sq. ft.	50 ft.	20 ft.	10 ft.	7.5 ft.	15 units/acre	50 ft. <sup>1</sup>	40%
MF	Manufactured Homes Single-Family/Two-Family	5,000 sq. ft.	50 ft.	10 ft.	10 ft.	7.5 ft.	17 units/acre	50 ft. <sup>2</sup>	40%
MX	Mixed Use	5,000 sq. ft.	50 ft.	20 ft.	10 ft. <sup>3</sup>	7.5 ft. <sup>3</sup>	17 units/acre	50 ft.	40%

Table footnotes:

1. Portions of this district may be located in an overlay district as shown on the Town's official zoning map and listed as part of this section. Maximum height of this district may be different than listed.
2. See section 40-73(9), **yard requirements**, for structures exceeding maximum height regulations.
3. Front yard setback is 50 feet if abutting a major thoroughfare.
4. Landscaping buffer requirements in article VI of this chapter may be greater than the required side yard setbacks.

# Building Height: Amend Chapter 40 - Sec. 40-74. Dimensional standards for lots and principal structures

Item 11.

Zoning District	Primary Permitted Uses	Min. Lot Size	Min. Lot Width <sup>6</sup>	Min. Front Yard	Min. Rear Yard	Min. Side Yards* (Corner Lot—Min. 12.5 ft.) <sup>4</sup>	Residential Max. Density	Max. Height	Max. Lot Coverage
CBD	Commercial Uses and Services, Entertainment	None	None	None	None, or same as abutting residential use or district	None, or same as abutting residential use or district	NA	50 ft. <sup>4</sup>	None
NB	Neighborhood Goods and Services	5,000 sq. ft.	50 ft.	20 ft.	10 ft.	7.5 ft.	8.7 units/ acre	50 ft. <sup>e</sup>	40%
HB	Highway Commercial	10,000 sq. ft.	100 ft.	30 ft.	15 ft., or 20 ft. if abutting a residential district	10 ft.	NA	50 ft. <sup>e</sup>	60%
MB	Water-Oriented Businesses, Single-Family/Two-Family	10,000 sq. ft.	100 ft.	30 ft.	10 ft.	10 ft.	N/A <sup>6</sup>	50 ft. <sup>e</sup>	40%
T-1	Hotels and Motels 15 units or less	20,000 sq. ft.	100 ft.	20 ft.	10 ft. <sup>3</sup>	7.5 ft.	32 units/acre	50 ft. <sup>2</sup>	40%
	Hotels and Motels Greater than 15 units	25,000 sq. ft.	50 ft.				60 units/acre		
	Restaurants/Businesses	6,000 sq. ft.	50 ft.						
	Single/Multi-Family	6,000 sq. ft.	50 ft.				29 units/acre		
I-1	Industrial	None. (Min. district size: 5 acres)	None	30 ft. <sup>3</sup>	None. *20 ft. if lot line abuts a residential lot or use <sup>3</sup>	None *20 ft. if lot line abuts a residential lot or use <sup>3</sup>	None	50 ft. <sup>e</sup>	None
HOD	See underlying districts for use and dimensional requirements	N/A	N/A	N/A	N/A	N/A	N/A	45 ft.	N/A

Table footnotes:

1. Portions of this district may be located in an overlay district as shown on the Town's official zoning map and listed as part of this section. Maximum height of this district may be different than listed.
2. See section 40-73(9), **yard requirements**, for structures exceeding maximum height regulations.
3. Front yard setback is 50 feet if abutting a major thoroughfare.
4. In this district, the standard 50-foot building limitation may be exceeded for sprinklered structure and maximum building height shall be solely based on conditional zoning review.
5. Landscaping buffer requirements in article VI of this chapter may be greater than the required side yard setbacks.

# Lot Coverage: Amend Chapter 40 - Sec. 40-73- Dimensional standards for the various zoning districts.

Item 11.

(12) Exceptions to lot coverage requirements. Multi-family structures with more than ten (10) units may exceed the maximum lot coverage requirements of the district to allow for structures to accommodate riser rooms for fire suppression equipment. Such additional lot coverage shall not exceed the minimum additional size required for a riser room by manufacturers specifications as designated by certified professional engineer.

# Lot Coverage: Amend Chapter 40 - Sec. 40-426. Reconstruction, maintenance, full or partial demolition and renovation of nonconforming situations

Item 11.

- a) Except for fences, which are regulated by article VII of this chapter, nonconforming uses created by a change in regulations may continue to exist and shall be subject to all other provisions of this article.
- b) Any building or structure for which normal repair, renovation, partial demolition and reconstruction or routine maintenance is proposed in an amount less than 50 percent of the current tax or certified appraised value of the building or structure, regardless of the reason for such repair or maintenance, shall be entitled to do so using the same building footprint and density with which the building or structure was originally constructed, provided the number of living units or nonresidential spaces are not increased and no additional nonconformities are created. Notwithstanding the foregoing, lot coverage may exceed that of the original construction if the expansion of the lot coverage is directly attributable to the addition of improvements for fire suppression, including sprinkler systems.
- c) In the event normal repairs, renovations, full or partial demolition will result in new construction to a nonconforming structure exceeding 50 percent of the current tax or certified appraised value of the building or structure in any period of 12 consecutive months (except as otherwise allowed in subsection (e) of this section), regardless of the reason for such repairs, renovations, full or partial demolition or maintenance, the owner shall be entitled to undertake new construction using the same building density with which the building or structure was originally constructed, provided that the following provisions are met:
  - 1) The number of living units or non-residential spaces are not increased.
  - 2) No additional nonconformities are created.
  - 3) All current minimum setbacks are met for the zoning district in which the structure is located.
  - 4) Maximum building height of the structure shall not exceed those of the zoning district in which it is located.
  - 5) Landscaping and buffer requirements shall meet the minimum requirements of the zoning district in which it is located.
  - 6) All parking requirements shall meet the minimum requirements of the district in which it is located.
  - 7) Lot coverage shall not exceed that of the original construction that is being replaced. Notwithstanding the foregoing, lot coverage may exceed that of the original construction if the expansion of the lot coverage is directly attributable to the addition of improvements for fire suppression, including sprinkler systems.

# Historic Considerations:

## Height Ordinance:

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

## Lot Coverage Ordinance:

- *Lot coverage* means that portion of a lot occupied by any semi-pervious or impervious structure or structures, either at ground level or the equivalent thereto when a structure is elevated on pilings, excepting parking areas and areas covered by the eaves of roofs.
- The lot coverage limitations for the various zoning districts have been unyielding ordinances, established for over 40 years.
- The lot coverage limitations vary depending on the zoning district and can range from 40% in most zoning districts (residential and some commercial) up to 60% for the Highway Business zoning district and 100% for the Central Business District.

# 2002 P&Z Meeting – Building Height Text Amendment

- A builder proposed increasing the building height from 35' to 45' to allow livable area above 35'.
- The existing ordinance allowed building height to be measured to the top of the living area and the attic, roof pitch, and other appurtenances could go beyond 35'.
- The Town was having issues where builders would try and circumvent the ordinance by finish out the attic space into livable space after receiving the CO.
- All the height allowances for appurtenances made it difficult for staff to administer the ordinance.
- During P&Z discussion, the town Fire Chief did not want the height of buildings to exceed 50' due to complications with the ladder and electrical lines and would prefer a max height of 45'.
- After member discussion, the P&Z board recommended having a hard 50' building height limit that accommodated all appurtenances and living areas to simplify the ordinance.

# 2002 Town Council – Building Height Text Amendment

Item 11.

- The P&Z board recommended the council consider a change to the ordinance to allow:
  - The total maximum height of 50' for unsprinkled structures. Requests for beyond 50' (allowed for sprinkled structures) must be approved under conditional use permits.
- There were no public comments and minimal council member discussion.
- The text amendment was passed unanimously by Town Council.

# Land Use Plan:

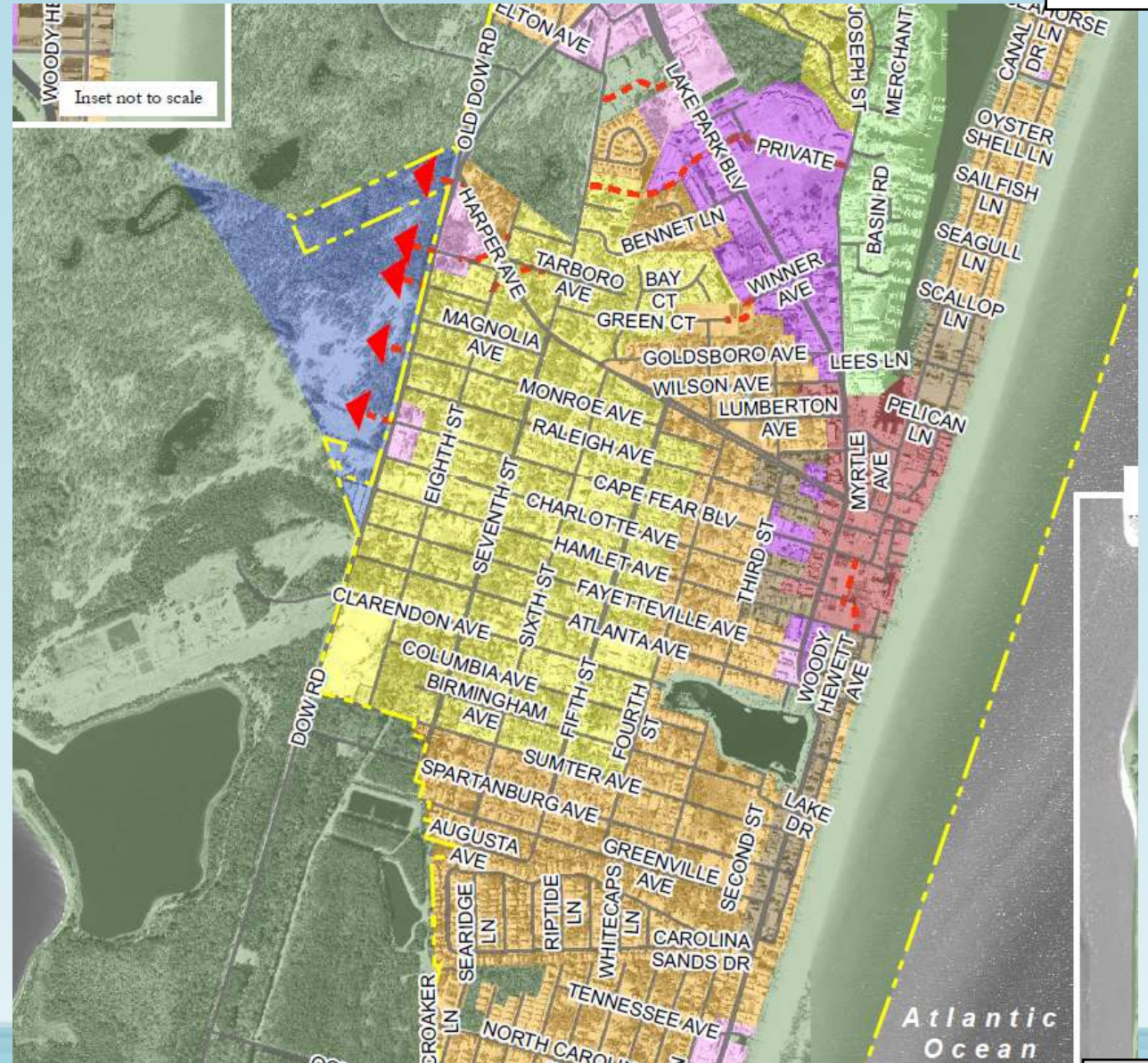
NOT in general conformity with the Land Use Plan.

Building Height exception does not conform to the following:

1. Redevelopment
  - “Increased building heights (especially in or near the downtown area) may conflict with the character of existing areas.”
2. Family-friendly community
  - lower structure heights are viewed positively as a contributing factor to a family-friendly community.

Lot Coverage exception does not conform to the following:

1. Community Goals #4
  - States a desire of the community to reduce overall nonconformities in the town.





# Staff Concerns – Changes to Building Height

1. Directly contradicts the historical standard for building height being limited to 50', with exception to some commercial zoning districts.
2. The use of “more than 10 units” as a limiting factor is an arbitrary number. There are 42 buildings consisting of more than 10 units and there are a total of 81 multi-family buildings consisting of anywhere from 3-10 units.
3. Anything over 50' in the current zoning ordinance is required to be approved by conditional zoning. The ordinance they propose would allow the approval of an elevator to exceed 50' without conditional zoning approval.

# Staff Concerns – Changes to Lot Coverage

1. The current zoning ordinance is very strict with maximum lot coverage and does not allow any expansions. The applicant's text amendment would allow staff the power to permit this lot coverage exception by right.
2. It does not address the upper floor usage of the space the riser room below occupies.
3. Staff understands the applicant would like to include limitations on which structures can take advantage of this text amendment but using "more than 10 units" as a limiting factor is an arbitrary number.

## **Sec. 40-426. Reconstruction, maintenance, full or partial demolition and renovation of nonconforming situations**

1. The applicant is proposing this amendment for clarification of the allowance in the non-conforming section of the ordinance.

# Staff Ordinance Recommendations – Building Height

## Sec. 40-73. - Dimensional standards for the various zoning districts.

(9) ~~Yard~~ Requirements for existing structures exceeding maximum height regulations. ~~Yards may be increased as a condition of approval for structures exceeding maximum height requirements.~~ Where structures are permitted to exceed the 50 feet maximum height regulation for an elevator shaft the following shall apply:

- ~~a. The minimum required front yard shall be increased by one foot for each foot in height exceeding the maximum height requirements.~~
- ~~b. The minimum required side yard shall be increased by one foot cumulatively for each foot in height exceeding the maximum height requirements.~~
- a. No changes have been made to the building height since the original construction.
- b. Permitted for multi-family structures in the R-1, MF and T-1 zoning districts with Conditional Zoning approval.
- c. To access habitable floors only (not to access roof top decks or other uses).

# Staff Ordinance Recommendations – Lot Coverage

## **Sec. 40-73. - Dimensional standards for the various zoning districts.**

(12) Exceptions to lot coverage requirements. Multi-family structures may exceed the maximum lot coverage requirements of the district to allow for structures to accommodate riser rooms for fire suppression equipment. The following standards shall apply.

- a. Shall not exceed the minimum size required for a riser room by manufacturers specifications as designated by certified professional engineer.
- b. Allocated square footage for the riser room on upper floors shall not be used for any other purpose not attributed to fire suppression system.
- c. Conditional Zoning approval required.

# Board Options:

1. Board could approve the applicant's text amendments. – All Amendments would be approved individually.
2. Board could approve staff's recommended amendments.
3. The board can approve or modify separate amendments at their discretion.
4. Deny proposed amendments.
5. Board could give further direction or have further discussion of amendments and request hearing the updated text amendments in a future P&Z meeting.

P&Z recommended denial of all text amendments. Staff recommends option 4, but if the board is considering changing the ordinance, then staff recommends option 2.

# Motion

## Approval

The council, whereas in accordance with the provisions of the NCGS, does hereby find and determine that the adoption of the following ordinance amendment to amend:

### Building Height:

- Sec. 40-73. - Dimensional standards for the various zoning districts.
- Sec. 40-74. Dimensional standards for lots and principal structures.

### Lot Coverage:

- Sec. 40-73. - Dimensional standards for the various zoning districts.
- Sec. 40-426. Reconstruction, maintenance, full or partial demolition and renovation of nonconforming situations.

## Denial –to amend:

### Building Height:

- Sec. 40-73. - Dimensional standards for the various zoning districts.
- Sec. 40-74. Dimensional standards for lots and principal structures.

### Lot Coverage:

- Sec. 40-73. - Dimensional standards for the various zoning districts
- Sec. 40-426. Reconstruction, maintenance, full or partial demolition and renovation of nonconforming situations.

## Further Direction/Discussion





## AGENDA ITEM COVERSHEET

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

**MEETING:** Town Council   April 9, 2024

**SUBJECT:** Text Amendment to Chapter 40 Art. III. Zoning District Regulations, Art. V. Off-street Parking and Loading Requirements; Parking, and Art. IX. Development Standards for Particular Uses to amend standards for Wine and Beer Shops.

Applicant: Neapolitan Enterprises, Inc.

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### **BACKGROUND:**

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

### **Proposal:**

The applicant owns the Neapolitan located in the MB district (See map). The business currently has an off-premise wine and malt beverage permit. The applicant would like to apply for on-premise wine and malt beverage permit at that location. Neapolitan is currently permitted as a retail establishment. For allowances of on-premise wine and malt beverage the current ordinance categorizes the use as either a standard restaurant or bar in the Marina Business. Wine and Beer Shops are currently not allowed in the MB district.

### **Wine Shop:**

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



limited consumption of on-premise wine would be subject to an audit by the ABC commission. Wine Shops (on-premise) are proposed to be permitted by right in the MB Districts.

### **Beer Shop:**

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

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

### **Parking**

When the amendment was adopted in April Wine and Beer Shops were categorized under eating and drinking establishments. Under this category the Neapolitan would be a change of use from retail to an eating and drinking establishment. This is important because the change of use would trigger a different parking standard. Parking for retail is calculated 1 parking space per 200 sq. ft. of retail space. Parking for eating and drinking establishments are calculated by 1 space per 110 sq. ft.

The Neapolitan was issued a permit as a retail establishment in 2022. This is a grandfathered use as the previous use of the property, the Checkered Church operated as a retail establishment since the mid 90's. Because this would be considered a change of use the applicant is proposing to amend the parking calculation to specifically state that Wine and Beer Shops (Retail/Off-premise) is based off on the retail parking calculation while also amending the use table to be consistent.

### **Recommendation:**

Staff have met with the applicant on what sections of the ordinance would need to be amended that would accomplish the goal of being able to have on premise wine and beer at their location. It was discussed with the applicant the concerns that are identified below for the Council review.

- Wine Shops are treated differently by the state that limit on premise consumption, but Beer Shops do not have any limitations from ABC regulations or audits. The proposal is for Wine and Beer shops with on premise consumption to be permitted by right. By expanding the allowance to other areas of town it may undermined Bar regulations as

they need a conditional zoning and have larger setback standards from residential districts (200 ft).

- Wine Shops by ABC regulations are treated as accessory to off-premise retail, but again Beer Shops do not have any ABC regulations for on premise consumptions and the impacts of parking could be similar to that of Bars.
- Currently if you are approved as a Bar you can be permitted to have mixed beverage, malt beverage and wine on-premises. The allowance would expand the way the town as treated alcohol permits with establishments being permitted by right for wine and beer. If an establishment would like to offer mixed beverage, then it would still need to be permitted as a bar.
- The Planning & Zoning Commission recommended denial of the text amendments as proposed.

**Land Use Plan:**

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

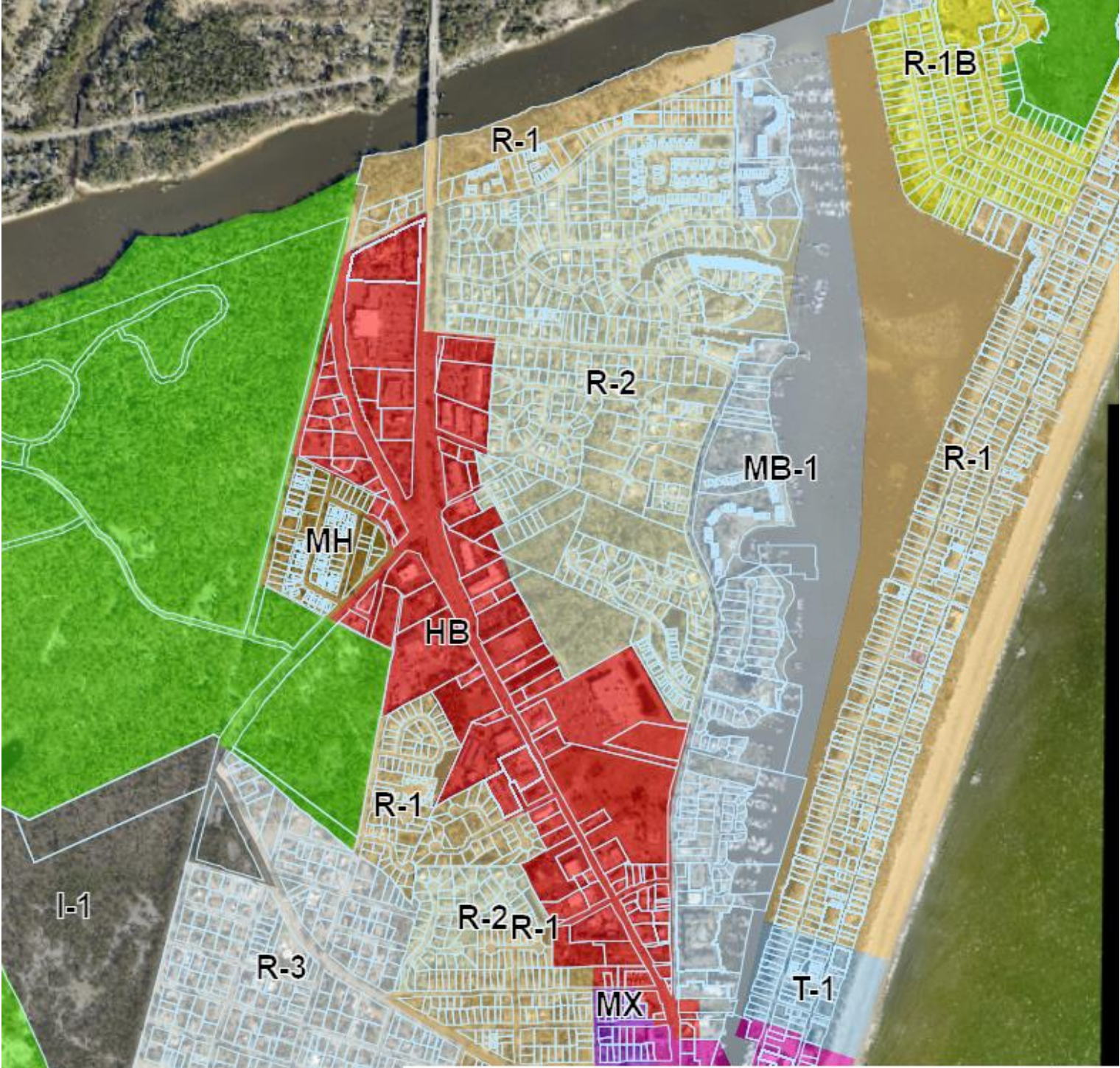
**ACTION REQUESTED:**

Consider recommending approval or denial of the text amendment.

**MOTION:**

Approval – to amend text amendment to Chapter 40 Art. III. Zoning District Regulations, Art. V. Off-street Parking and Loading Requirements; Parking, and Art. IX. Development Standards for Particular Uses to amend standards for Wine and Beer Shops.

Denial – to amend text amendment to Chapter 40 Art. III. Zoning District Regulations, Art. V. Off-street Parking and Loading Requirements; Parking, and Art. IX. Development Standards for Particular Uses to amend standards for Wine and Beer Shops.



Amendment Number: \_\_\_\_\_



### PETITION FOR A TEXT AMENDMENT

Petitions shall be submitted for review to the Department of Planning and Development located at 1121 N. Lake Park Blvd., Carolina Beach, NC 28428. Only complete petitions will be processed.

#### PETITIONER

Petitioner's Full Name: Neapolitan Enterprises, Inc. (Paul & Erika Tully) Phone #: (847 )- 910 \_ 7092

Street Address: 800 Saint Joseph

City: Carolina Beach State: NC Zip: 28428

Email: tully@neapolitan3.com

#### REQUESTED TEXT AMENDMENT

Town Code Section(s) Requested to be Amended: Sec. 40-72 Table of Permitted Uses

Please provide a general proposal for the amendment to the Town Code Section(s) stated above which you believe will result in improved regulations for all the residents of the Town of Carolina Beach  
Amend: Wine Shops (On-Premise) and Beer Shops (On-Premise) to permitted "P" in the MB-1 district.

This petition will be scheduled for the next possible meetings with the following boards: (1) Technical Review Committee, (2) Planning and Zoning Commission and (3) Town Council. The petitioner or a representative should be present at all meetings to answer any questions. Contact the Department of Planning and Development for a schedule of meeting times and submittal deadlines. All meetings are held at the Municipal Administration Building, 1121 N. Lake Park Boulevard, Carolina Beach, NC 28428. Petitioners will be informed of any changes in date, time, or location of meetings.

**I understand that the fee for review is nonrefundable.**

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

Signature of Petitioner: *Paul Tully* Date: 1/23/24

### Sec. 40-150. Off-street parking standards.

(d) *Off-street parking space schedule.*

Types of Uses	Number of Required Parking Spaces
<b>Business uses</b>	
<a href="#">Wine and Beer Shops (Retail/Off-premise)</a>	<a href="#">1 per 200 sq. ft.</a>

### Sec. 40-72. Table of permissible uses.

P = Permitted.

CZ= May be permitted with conditional zoning

S = May be permitted by special use permit

USES OF LAND	R-1	R-1B	R-2	R-3	C	MH	MF	MX	CBD	NB	HB	MB-1	T-1	1-1
Wine and beer shops (Retail/Off- <a href="#">On</a> premise)									p	<a href="#">P</a>	p	<a href="#">P</a>		
<del>Wine Shop (On-premise)</del>									<del>p</del>	<del>p</del>	<del>p</del>			
<del>Beer Shop (On-premise)</del>										<del>p</del>				

### Sec. 40-261. Development standards for particular uses.

(o) *Eating and/or drinking establishments*

(4) Standards for wine shops (on-premise):

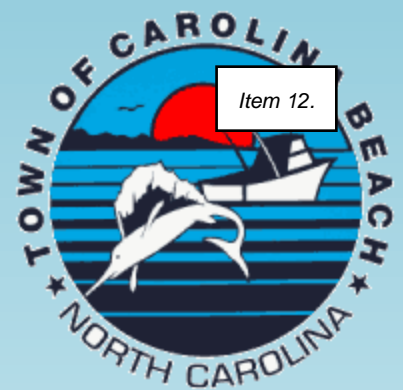
a. All wine shops shall meet all requirements of the ABC Permit.

(5) Standards for beer shops (on-premise):

a. All beer shops shall meet all requirements of the ABC Permit.

b. Any indoor or outdoor areas shall be located three times the minimum setback yard ~~for the from~~ any [residential](#) district ~~from any lot line and/or any residential use. The additional setbacks shall not apply to property lines adjacent to the right-of-way.~~





# Text Amendment for Wine Shops & Beer Shops

1. Amend Chapter 40 Sec 40-72 – Permitted Use Table
2. Amend Chapter 40 Sec 40-261 – Amend the development standards for the uses.
3. Amend Chapter 40 Art. V. Off-street Parking and Loading Requirements

Applicant: Neapolitan Enterprise, Inc

# Background

- Applicant owns Neapolitan – currently permitted as retail establishment in MB district
- The business currently holds off-premise wine and malt beverage permit
- Applicant proposes on-premise wine and malt beverage consumption



1. Add on premise Beer and Wine shops as permitted use in the MB district.
2. Amend the standards for Beer Shops from a residential use.
3. Amend parking regulations for beer and wine shops.



# Wine and Beer Shop on premise created in April 2023

- Bars and taverns
- Breweries
- Standard restaurants and eateries

USES OF LAND	R-1	R-1B	R-2	R-3	C	MH	MF	MX	CBD	NB	HB	MB-1	T-1	I-1
Bars and taverns (See <a href="#">section 40-261</a> )									CZ		CZ	CZ	CZ	CZ

<https://carolinabeach.maps.arcgis.com/apps/webappviewer/index.html?id=9c79295899134fe79a1b50b6bb1a1e75>

# 1. Amend Chapter 40 Sec 40-72 – to allow for Wine and Beer shops (on-premise)

USES OF LAND	R-1	R-1B	R-2	R-3	C	MH	MF	MX	CBD	NB	HB	MB-1	T-1	1-1
Wine and beer shops (Retail/Off- <u>On</u> premise)									p	<u>p</u>	p	<u>p</u>		
<del>Wine Shop (On-premise)</del>									p	p	p			
<del>Beer Shop (On-premise)</del>										p				

The current ordinance only allows for beer shops (on-premise) in NB.

# ABC permit requirements

## Wine shop

- Wine Shop Permit
- Retail sales on and off-premise
- Sale of wine for consumption on premise cannot exceed 40% of the establishment's total sale for 30 days

## Beer shop

- On-premise Malt Beverage Permit
- Retail sales on and off-premise
- No limitation or percentage to off-premise sales

## 2. Amend Chapter 40 Sec 40-261 – to create development standards for the uses.

### Sec. 40-261. Development standards for particular uses.

#### (o) *Eating and/or drinking establishments*

##### (4) Standards for wine shops (on-premise):

- a. All wine shops shall meet all requirements of the ABC Permit.

##### (5) Standards for beer shops (on-premise):

- a. All beer shops shall meet all requirements of the ABC Permit.
- b. Any indoor or outdoor areas shall be located three times the minimum setback yard ~~for the~~ from any residential district ~~from any lot line and/or any residential use. The additional setbacks shall not apply to property lines adjacent to the right-of-way.~~

### 3. Sec. 40-150. Off-street parking standards.

Types of Uses	Number of Required Parking Spaces
<b>Business uses</b>	
<u>Wine and Beer Shops (Retail/Off-On premise)</u>	<u>1 per 200 sq. ft.</u>

### Land Use Plan Consistency

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

General Conformity with the Land Use Plan by promoting a healthy year-round economy.



#### **Marina Commercial/Industrial Mixed Use**

Water-based commercial, service, and light industrial uses, and sometimes water-related businesses (such as restaurants). These businesses rely on water access, so structures are purpose-built and traditional maritime activities are common.



# Recommendations :

Item 12.

Wine Shops – Limited 40% on premise consumption.

Beer Shops – By permitting by right in other areas vs CZ may be undermining Bar regulations and standards

## Staff Approval – Beer and Wine Shop

- Malt beverage on premise
- Wine Shop on premise limited to 40% sales

## CZ

- Mixed beverage on premise.
- Wine on premises exceeding 40%.

## Bar On-premise

- Wine
- Malt beverage
- Mixed Beverage

# Recommendation

## Parking

- Wine Shops by ABC regulations are treated as accessory to off-premise retail.
- Beer Shops do not have any ABC regulations for on premise consumptions and the impacts of parking could be similar to that of Bars

<b>Types of Uses</b>	<b>Number of Required Parking Spaces</b>
Retail stores and service businesses (i.e., barber, tailor, etc.)	1 per 200 sq. ft. of actual retail space or service area
Eating and/or drinking establishments	1 per 110 square feet of indoor gross floor area (GFA)



# Motion

## Approval

- The Council, Whereas in accordance with the provisions of the NCGS, does hereby find and determine that the adoption of the following ordinance amendment to Amend Chapter 40, Art. III. – Zoning District Regulations, Art. IX. – Development Standards for Particular Uses, and Art. V. Off-street parking and loading requirements. Definitions to create standards for Wine Shops and Beer Shops is consistent with the goals and objectives of the adopted Land Use Plan and other long-range plans or
- Denial - based on inconsistencies with the goals and objectives of the adopted Land Use Plan and/or other long-range planning documents.
- Further Direction/Discussion

The Planning & Zoning Commission recommended denial of the text amendments as proposed.

# Definitions

Beer Shop means an establishment substantially engaged in retail sale of malt beverages on and off premises subject to the ABC Commission regulations.

Wine Shop means an establishment substantially engaged in retail sale of unfortified wine and fortified wine for consumption on and off premises subject to the NC ABC Commission regulations.





## AGENDA ITEM COVERSHEET

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**PREPARED BY:** Kim Ward, Town Clerk

**DEPARTMENT:** Clerk

**MEETING:** Town Council April 9, 2024

**SUBJECT:** Proclamation to Recognize April 26, 2024 as National Arbor Day

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**BACKGROUND:**

The attached proclamation will formally recognize the celebration of Arbor Day in the Town of Carolina Beach. A formal proclamation recognizing Arbor Day is a yearly requirement for a community to receive Tree City USA accreditation.

**ACTION REQUESTED:**

Approval of Arbor Day Proclamation 24-2304

# Proclamation



Town of Carolina Beach  
Town Council

**PROCLAMATION NO. 24-2304**

**WHEREAS,** in 1872, the Nebraska Board of Agriculture established a special day to be set aside for the planting of trees, *and*

**WHEREAS,** this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, *and*

**WHEREAS,** Arbor Day is now observed throughout the nation and the world, *and*

**WHEREAS,** trees can be a solution to combating climate change by reducing the erosion of our precious topsoil by wind and water, cutting heating and cooling costs, moderating the temperature, cleaning the air, producing life-saving oxygen, and providing habitat for wildlife, *and*

**WHEREAS,** trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community, *and*

**NOW, THEREFORE,** I, Lynn Barbee, Mayor of the Town of Carolina Beach, do hereby proclaim April 26, 2024 as National Arbor Day, and I urge all citizens to celebrate Arbor Day and support efforts to protect our trees and woodlands, *and*

**FURTHER,** I urge all citizens to plant trees to promote the well-being of this and future generations.

Proclaimed this 9<sup>th</sup> day of April, 2024.

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Mayor Albert L. Barbee

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Attest: Kimberlee Ward, Town Clerk



## AGENDA ITEM COVERSHEET

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**PREPARED BY:** Ed Parvin, Deputy Town Manager

**DEPARTMENT:** Clerk

**MEETING:** Town Council Meeting 4/9/2024

**SUBJECT:** Discussion of an Encroachment Agreement for R09006-005-003-000

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### **BACKGROUND:**

The Sea Witch Restaurant recently completed a survey of their property. It revealed an encroachment of their operation onto the Town's adjacent property (see Exhibit A of the enclosed Encroachment Agreement). This situation has existed for many years and was unknown to the current owners and the Town until the survey was reviewed.

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

### **ACTION:**

Staff recommends adopting the attached encroachment agreement.

STATE OF NORTH CAROLINA  
 COUNTY OF NEW HANOVER

ENCROACHMENT AGREEMENT

Burdened Property: Carolina Beach Avenue  
 Right-of-Way &  
 R09006-005-003-000

For the Benefit of: R09006-005-019-000 &  
 R09006-005-016-000

THIS ENCROACHMENT AGREEMENT (“Encroachment Agreement”) made this \_\_\_\_ day of \_\_\_\_\_, 2024, by and between the TOWN OF CAROLINA BEACH, a North Carolina municipal corporation, whose address is \_\_\_\_\_ (hereinafter called “GRANTOR” or “TOWN”) and PAGE S. JOHNSON, II and AMY A. JOHNSON, husband and wife, as Tenants by the Entirety, whose address is 1300 Diamond Springs Road, Ste. 204, Virginia Beach, VA 23455 (hereinafter called “GRANTEES”).

WITNESSETH

WHEREAS, GRANTEES are the owners of those certain tracts or parcels of land identified by the New Hanover County Tax Office as R09006-005-019-000 and R09006-005-016-000 and being further described as: Being all that real property located in New Hanover County, North Carolina legally described in that deed recorded in Deed Book 6684 at Page 566 in the New Hanover County Registry (collectively, hereinafter referred to as “GRANTEES’ Properties”)

WHEREAS, TOWN is the owner of certain tracts or parcels of land located adjacent to the GRANTEES’ Properties and further described a public right of way known as “Carolina Beach Avenue” and a tract or parcel of land identified by the New Hanover County Tax Office as a R09006-005-003-000 (hereinafter collectively, referred to as “TOWN’s Properties”); and

WHEREAS, there is located on the GRANTEES’ Properties certain improvements, including planter boxes, decking, storages areas, roof overhang and building façade (hereinafter collectively referred to as the “Encroachments”) as more specifically shown on Exhibit A attached hereto (hereinafter referred to as the “Encroachments Exhibit”); which encroach onto the TOWN’s Properties and GRANTEES have requested TOWN’s permission to continue to allow for the Encroachments to encroach upon the TOWN’s Properties in the locations shown on the Encroachments Exhibit; and

WHEREAS, TOWN has determined that the Encroachments do not substantially impair or hinder the use of the TOWN's Properties and in the exercise of the authority conferred upon it by law, is willing to allow and grant GRANTEES the privilege of a continuing the encroachment of Encroachments onto the TOWN's Properties pursuant to the conditions stated in this agreement.

NOW, THEREFORE, IT IS AGREED that the TOWN hereby grants to the GRANTEES the privilege to continue Encroachments pursuant to all the terms and conditions recited herein:

#### GENERAL CONDITIONS

- (1) The GRANTEES are using the Encroachments in a safe and proper manner and shall maintain the Encroachments in a safe and proper condition at all times so that the Encroachments will not unreasonably interfere with or endanger the use of the TOWN's Properties by the TOWN or general public.
- (2) The GRANTEES agree to restore all areas of the TOWN's Properties which are disturbed by any construction, renovation, operation, maintenance and use by GRANTEES of the Encroachments to a condition reasonably satisfactory to the TOWN.
- (3) Nothing herein shall be construed to grant any exclusive use right to GRANTEES in or to any area or property which either belongs to the TOWN or is dedicated to public use.
- (4) The Encroachments may not be modified or otherwise altered in any substantial manner that would increase the degree of encroachment into the TOWN's Properties without review and approval by TOWN, not to be unreasonably withheld or delayed.
- (5) This Encroachment Agreement shall automatically terminate upon complete removal of the Encroachments by GRANTEES.
- (8) The TOWN's failure, to insist upon the strict performance of any provision of this Encroachment Agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this Encroachment Agreement.
- (9) GRANTEES agree to indemnify and save harmless TOWN from all damages and claims for damage that may arise by reason of the GRANTEES' failure to perform pursuant to this Encroachment Agreement.
- (10) All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina. In the event of a conflict between the various terms and conditions contained herein or between these terms and other applicable provisions, then the more particular shall prevail over the general and the more stringent or higher standard shall prevail over the less stringent or lower standard.
- (11) This Encroachment Agreement constitutes the entire understanding of the parties with respect to the hereinabove described certain Encroachments.

(12) If any section, subsection, paragraph, sentence, clause, phrase or portion of this agreement is for any reason held invalid, unlawful, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

(13) This Encroachment Agreement shall not be modified or otherwise amended except in writing signed by the parties.

(14) The designations GRANTEES, GRANTOR and TOWN as used herein shall include singular, plural, masculine, feminine or neuter as required by context.

IN WITNESS WHEREOF, each of the parties to this Encroachment Agreement has caused the same to be executed in the day and year first above written.

**GRANTOR:**  
TOWN OF CAROLINA BEACH

By: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

**ADD APPROPRIATE NOTARY**



**GRANTEES:**

PAGE S. JOHNSON, II

By: \_\_\_\_\_

\_\_\_\_\_ County, North Carolina

I certify that Page S. Johnson, II, personally appeared before me this day, each acknowledging to me that he signed the foregoing document.

Date: \_\_\_\_\_  
(Official Seal)

\_\_\_\_\_  
*Signature of Notary*

*Notary's printed or typed name*

My commission expires:

AMY A. JOHNSON

By: \_\_\_\_\_

\_\_\_\_\_ County, North Carolina

I certify that Amy A. Johnson, personally appeared before me this day, each acknowledging to me that she signed the foregoing document.

Date: \_\_\_\_\_  
(Official Seal)

\_\_\_\_\_  
*Signature of Notary*

*Notary's printed or typed name*

My commission expires:





## AGENDA ITEM COVERSHEET

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**PREPARED BY:** Kim Ward, Town Clerk

**DEPARTMENT:** Clerk

**MEETING:** Town Council Meeting 4/9/2024

**SUBJECT:** Closed Session – Attorney/Client Privilege

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**RECOMMENDED MOTION:**

Closed session to discuss an attorney/client matter in accordance with NCGS 143-318.11(3).

The matter being discussed is 23 CVS 003744 Carolina Beach Landholdings versus Town of Carolina Beach.