

CAROLINA BEACH

Board of Adjustment Minutes
Monday, November 18, 2019 @ 6:00 PM
Council Chambers
1121 N. Lake Park Boulevard
Carolina Beach, NC 28428

ASSEMBLY

The Town of Carolina Beach Board of Adjustment was held on Monday, November 18, 2019 at 6:00 PM at Council Chambers.

PRESENT: Chairman Wayne Hartsell, Sr., Board Member Teresa Shue, Board Member Miriam Howe, Board Member Paul Levy, Board Member Amanda Nestor, and Board Member Jullena Jones Shelly

ABSENT: Patrick Boykin

ALSO PRESENT: Director of Planning & Development Jeremy Hardison

1. CALL TO ORDER

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

2. APPROVAL OF MINUTES

- a. Board of Adjustment - Regular Meeting - May 21, 2018 and June 18, 2018
Committee Member Jones Shelley made a motion to approve both of the meeting minutes. Chairman Hartsell second, all were in favor (5-0).

3. PUBLIC DISCUSSION

- a. To consider an appeal from Section 40-72 Permitted Use Table
All were sworn in that wanted to speak.

Mr. Hardison reported on the appeal, Applicant: Oceana Owners Association Inc.

Adjacent property owner claims a violation is occurring on there neighbors property on how they are using the property. After looking into the complaint staff decision was that the alleged violation was in compliance with the ordinance. The neighbor or the applicant Oceana Owners Association Inc. appealing staffs determination because that they contest that a violation of the ordinance is occurring.

We are here to determine if an error in any order, requirement, decision, or determination was made by staff. A decision would be made to uphold the Zoning Administrators decision or the decision can be overturned.

Appeal to Sec. 40-72 Permitted Use Table -

The P represents: Permitted by right and can applied for a permit and staff can issue the permit.
 The C represents: CUP Conditional Use Permit and because of the scope of the project like hotels or shopping centers this would have to be reviewed at a higher level, public comment would also play a part than this would have to be approved by Town Council.

And if there isn't anything withing the column that means there is nothing allowed in that zoning district.

If the use is not specifically stated then that has to become either an interpretation or it is not allowed.

USES OF LAND	R-1	R-1B	R-2	R-3	C	MH	MF	MX	CBD	NB	HB	MB-1	T-1	I-1
	Residential Uses													
Two-family dwellings	P					P	P	P					P	P
Manufactured home, on standard, single-family lot (See section 40-261)						P								
Multifamily dwellings (See section 40-260)							P	C					C	C
Planned unit development, residential (See article XII of this chapter)	C		C			C	C	C			C		C	C
Single-family detached	P	P	P	P	P	P	P	P		P			P	P
Attached single-family residential							P	P		P			P	P
Accessory Uses														
Accessory uses and structures, including garages, carports, etc. (See sections 40-261, 40-545)	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Home occupations, customary (See sections 40-261, 40-545)	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Swimming pools, private (See sections 40-261, 40-545)	P	P	P	P	P	P	P	P		P			P	P
Swimming pools, public (See sections 40-261, 40-545)	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Neighborhood Uses														
Adult entertainment establishment (See sections 40-261, 40-545)														C
Aircraft Takeoff and Landing Zone (See sections 40-261, 40-545)														
Prohibited														
Arcades, rides, games in enclosed buildings									P			C		
Animal Care Facility													P	
Animal Care Facility with Outdoor Area (See section 40-261)													C	
Art galleries (See section 40-545)								P	P	P	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, 40-545)										C	P			P
Automobile service stations and convenience stores									P	P	P			
Bakeries, retail, off-premises sales											P			P

There is a corresponding zoning map that details what is allowed and where. The basic functions of the zoning map: There are residential and commercial districts, industrial and institution or create additional zoning districts with different categories and distinguish what uses go where.

This appeal is for the surrounding use of a parking lot which is located in the Oceana subdivision and the Spinnaker Point development which is in a gated community and is associated with Carolina Beach Marina and Yacht Club.

Existing Uses:

- 69 Boat Slip Marina
- Residential Unit
- Marina Store w/Office
- Fuel dock
- Existing off site 56 space parking lot

Violation Complaint -

Staff received a complaint and in the subject line stated that it was not adhering to a conditional use permit which was from 2005.

-Demolition of the existing building, reconfigure of the boat slips and also bought the adjacent town property with a well. None of this was ever developed or started. In 2007 the CUP had expired along with the conditions and any approvals associated with it and because of this staff can not enforce any of those conditions.

-Develop 24 residential units, restaurant, ship store, sales office, fitness center, laundry and bath facilities, and a marina dry storage area.

-Buy town property.

-Add additional boat slips

-The parking area is being used as a typical marina business parking lot: boat parking, trailer parking, equipment parking, space rental, and customer parking.

-The CUP specifically states the parking is used for boat slip POC parking only. Furthermore, business parking in a residential area zoned parking is not a permitted use.

-The parking spaces were never constructed according to the approved plan and encroach onto Oceana HOA property lines and current parking use.

Staff checked and there were boats being stored on the lot, we contacted the property owner and told them the parking lot is for marina use only, and as of today there were no signs of any boats. We received a call from the applicants attorney to clarify exactly what the focus is for this and he stated that business parking is happening in a residential area and it is not a permitted use.

The ordinance states - Uses of Land -

Parking and loading areas serving uses in the same zoning district, on same or contiguous lot (See article V of this chapter), Permitted.

Parking and loading areas serving uses in the same zoning district, on non-contiguous lot (See article V of this chapter). CUP. The triangle parking lot is zoned residential in R1B. In 2000 there was a rewrite to the zoning ordinance and a zoning map was also adopted.

When the uses are not listed and in the ordinance Sec 40-71. Uses not listed. The permitted, not permitted or conditional status of any use not listed in the table of uses shall be determined by the Zoning Administrator based upon the Administrator's comparison of similar uses as allowed in similar locations. In this case when the parking lot is not contiguous and is in a different zoning district is currently not allowed in the zoning ordinance. This parking lot has been used as a parking lot and associated with the marina for boat slips for some time now.

The history of this area:

- CB Marina & Yacht Club
- Spinnaker Point - 72 unit Multi-family building development
- Oceana Subdivision - 49 single family subdivision with a gate

There was a CUP in 1982 which was a rendering of the plan for 372 dwelling units that became Spinnaker Point with a marina. In 1984 four buildings were built but not fully developed and had sat vacant for some time. Then in 1994 a plat was for phase one for Oceana subdivision with 32 lots and approved by town council and then later that year the town approved phase 2 for 17 units, which had the triangular parking lot added. In that same year there was a rezoning of the marina boat slips in the upland area which was in the RA-6 area and zoned to MB-1 for marina business.

As of today - Non-conforming -

- An existing parking lot serving a use in a different zoning district would be treated as a *nonconforming use*.
- This means a use that occurs when a building or land lawfully occupies a property prior to the current ordinance, but is no longer permitted (Sec. 40-548).
- The use has a right to occupy the property unless it is abandonment and discontinuance for a consecutive period of 180 days, the property involved may thereafter be used only for conforming purposes (Sec. 40-429).

Staff's position is that the Carolina Beach Marina & Yacht club utilization of the parking lot inside the gates of the Oceana/Spinnaker Point development is consistent with the ordinance. Decision - Uphold the Zoning Administrator's decision or overturn the decision.

Questions for Mr. Hardison -

Chairman Hartsell asked if this was grandfathered. Mr. Hardison replied yes sir.

Samuel Potter is an attorney with Hodges-Cox-Potter in Wilmington North Carolina. He has a handout to present to the board.

Grady Richardson who represents the Yacht Club, objects to tendering into the record at this stage of any evidentiary matters. When they made their complaint Mr. Hardison has already reviewed and made his determination that formed this appeal and to introduce new evidence into the record is improper and should not be allowed.

Matt Nichols is the BOA attorney and spoke on Mr. Richardson's objection. The objection is to preclude additional evidence to be considered by the board and is his opinion that the applicant should be given the opportunity to present his evidence because this is the hearing which then the board can weigh that evidence accordingly.

Chairman Hartsell allowed the evidence at this time.

Samuel Potter represents Oceana homeowners association and would like to present a document to the board. The document shows the history to the subject and he is offering it as

evidence and the purpose is to have these documents in the record. Stated the issue before you is a simple one, and the question is is this a legal non-conforming use or an illegal non-conforming use. According to the town's ordinance a legal non-conforming use is a use that was legal under the zoning ordinance at some time prior to the current zoning ordinance. Mr. Potter asked Mr. Hardison this parking lot (property) was under the previous zoning ordinance and also zoned for residential use, is that correct. Mr. Hardison replied yes with the zoning change back in 1994. So the parking lot itself has always been zoned residential, is that correct. Mr. Hardison replied, correct. Under the previous zoning ordinance before 2004 was a parking lot serving a permitted commercial use in a residential zoned district, correct. Mr. Hardison replied yes and went on to say prior to the current ordinance which was in 2000 the last update was in 1984 and under that ordinance the parking lot servicing a different use in a different zoning district not contiguous was allowed as long as that use was within 500 feet of the principal use. So it's your testimony today that under the RA-6 zoning that was in place up till 2000 that it did allow a parking lot as a permitted use not a conditional use. Mr. Hardison replied there is verbiage referencing of a special use. Mr. Potter asked, was a special use permit ever granted for the parking lot to exist in a residential zoned district. Mr. Hardison replied looking through his records he did not see a special use permit for the subdivision other than what was approved in 1982. He added the subdivision plat was recorded in 1994 and the conditional use permit was originally issued in 1982 for Spinnaker Point. Mr. Potter asked, you testified initially that the conditional use permit from 2004 for this property was no longer valid because it hadn't actually been built, is that right that it expired in 2007. Mr. Hardison responded yes and it was issued in 2005. The permit from the early 80's was never complied with either was it and was it fully built out. Mr. Hardison replied it started construction and was for Spinnaker Point, with the marina and the multifamily buildings and no it was not built out. Mr. Potter asked Mr. Hardison that within the document behind tab #9 is the agenda and narrative that prepared for today's hearing, correct and do you stand behind the factual standpoint as well as the interpretation standpoint, correct. Mr. Hardison replied correct to both. The plat from 1994 was attached to the agenda item, correct and was also part of your presentation, correct. Mr. Hardison answered correct to both. The marina is not shown on that plat correct, it is just the parking lot, correct. Mr. Hardison replied it is not. The parking lot at the time was owned by Oceana Limited Partnership is that right along with all the lots shown on that plat is that right. Mr. Hardison replied yes that was his findings. When the town approved that plat they approved the parking lot showing the lots and there was no showing of the marina on that plat at that time, is that right. Mr. Hardison responded correct. Mr. Potter stated that the parking lot was never conforming and it had to be conforming in order to now be a legal non-conforming use at some point in time. Mr. Hardison testified that a parking lot could have been permitted under the old zoning ordinance but it required a special or conditional use permit of which the town has no record so it couldn't have been conforming under the past ordinance and it's not conforming under the current ordinance. So as a result Mr. Hartsell, it can't be grandfathered in. Our position is you can't have a legal non-conforming use if the use wasn't legal to begin with.

Mr. Richardson has a brief to hand out. He and Jennifer Carpenter represent the land owner of the marina in question and also utilizes the parking lot. They have used the parking lot for over 25 years and each space ties to a boat slip and owners at the marina. The marina has been there since at least the first phase of Spinnaker multi-family which Mr. Hardison said it was non-conforming with the present zoning. Mr. Potter's view is we should put the owners of Spinnaker on notice that they have a non-conforming use and they're in violation of the zoning. If there was a problem with the marina and the use of the parking lot then Mr. Potter's clients should not have moved to the Oceana planned subdivision or Spinnaker because the parking lot has been used for years. There

isn't any evidence of any change of use about the parking lot. There is also an easement that's been passed from the original developer through the years and leading up to Mr. Cook and his company being the marina owner which ties the parking lot to the access to the marina. The plat map on record from 1994, which is in the New Hanover county registry (map book 34 page 143) and clearly depicts the parking lot area in question. This is important because all the owners of the HOA that made the complaint they take their property subject to the recorded instruments of title in their chain of title this is called a dedicated easement arising by the use and reference to a plat map. The basis for the brief are, the easiest way to defeat the applicant (HOA) is that their complaint has to be judged based upon what their complaint says and that is my client supposedly violated a 2005 CUP which is not accurate. There was a 2005 CUP issued but nothing was done with it and it had expired. The complaint based on the 2005 CUP has no merit per Mr. Hardison there wasn't a 2005 CUP that's valid any longer, end of discussion, and that's our first argument. On February 21, 2019 the HOA made their complaint after all these years. In 1984 the land was zoned RA-6 and owned by the HOA, Spinnaker and the marina which all started as the Oceana Limited Partnership, (Oceana). This was to be used for the marina, multifamily dwellings and single-family residences, Oceana did all that they needed to do for the approval and the town granted the CUP and it was never challenged or appealed. In 1985 4 multifamily buildings were constructed and renamed Spinnaker Point Phase I. In March of 1994 Oceana received approval for 32 residential lots adjacent to the marina. The importance to all of this is the Marina was there before the residence ever purchased their homes. In August 1994 the property owned by the marina was resigned to marina business 1, and at that time there were no complaints. In September 1994 Oceana received approval for Spinnaker Point Phase II and on the plat map identified the parking lot which provided future boats slip owners. In 1996 Oceana sold the marina property which was zoned MB-1 and it's parking lot to another owner. He questions in 23 years with all that had been going on someone would have complained before this board and no one did. It is our position that if this complaint had any merit which it does not because it based itself on the 2005 CUP which isn't before this board. They're complaint is barred by multiple statutes of limitations and on the plat map there is a corporeal hereditament which means easement rights which follows the land in questions not only for the yacht club but the HOA and the unit owners at Spinnaker Point. They brought a zoning complaint on the basis of a zoning use that's been around since 1984 and then there is a six year statute of limitation. There is also a ten year statute of limitation, if you feel this is a breach in the warranties in your deed you have ten years to bring a cause of action. And there is an adverse possession on our part this marina has been an open notorious and hostile manner visible to everyone within the subdivision for over 20 yrs. He doesn't believe the HOA has standing to bring this complaint or have alleged any special damage. Allegedly if they've suffered property damage just general diminution and value of your property does not confer upon you legal standing to bring the complaint. We would contend that the HOA's complaint is barred by principles of estoppel and the bottom line with this is where a party's current position is inconsistent with their previous positions. The fact that the parking lot is actually in place and being used and is in their chain of title on a plat map from 1994 that in itself should lead this board to the decision based on a estoppel if nothing else to uphold Mr. Hardison's decision. Mr. Potter talks about legal and illegal non-conforming uses he wants you to forget about three decades of use. My clients predecessor did the right thing applying for a permit for the marina and the parking lot and my client has an easement a pertinent to their property. We would move the owners brief a motion to dismiss into the record and we ask with all due respect that this board uphold Mr. Hardison's determination and deny the complaint. We believe that the marina and the parking lot are not necessarily non-conforming they were duly approved in 1984.

There were no questions for Mr. Richardson.

Chairman Hartsell made a motion to open the meeting to the public.

Olin Furr lives at 440 Oceana Way he has lived there for two years. He has concerns and has done his research from 1980 to present. Feels the parking lot appears to be part of Oceana and didn't realize it was part of the marina but is zoned residential. Originally on the plat page 179 and 180 states the parking lot is for Oceana Limited who bought from Coquina Harbor. Then in 1996 Oceana Limited sold five tracks to Waterway South for \$250k, and the two are the same owners. The five tracks became what's known as the marina and prior to that he doesn't think it was a retail marina. The five tracks became the marina property, the easement right a ways, the parking lot, the road in the parking lot, and there was a track on the point that the owner was keeping for himself to build a house in the future. He's pro-business but feels mistakes were made on the town's part because of trying to rejuvenate business. He has read the town's ordinances multiple times and feels the town made a mistake on the parking lot and should never been allowed because it is a residential area and is attached to a commercial use. And in the ordinance he feels that the parking lot should have been used for the town to put a parking lot in that would be a pay to park lot. It's not that we want to shut down any business or that they're bad neighbors. He feels that the project they are trying to get approved will need 56% of the total parking area. There maybe slip holders but if his business does well then people who will be frequenting the barge will need to have a place to park and may run out of places then will have to come on the inside of the gated area. We are very concerned about this situation because of the safety issues that could arise.

Chairman Hartsell closed the public hearing.

Mr. Hardison stated that staff's determination is based off of decisions that were made 25 or 35 years ago and reviewing files and minutes and is based on best available data. The plat with the town's approval dedicating the parking lot within a residential zone property and had retained ownership from the original developer which was essentially sold along with the marina and an easement was dedicated to that parking lot for them to go through the subdivision. Also the marina itself was split by the developer as this plat was recorded a year later. As the lots were going up for sale a deed with a boat slip would go into the ownership of those lots. It doesn't mention any parking associated with those properties or those deeds that he could find.

Mr. Potter addressed Mr. Richardson's question regarding the complaint of the Association file, this is in the packet that he presented to the board and read "furthermore, business parking in a residential area zoned parking lot is not a permitted use". Stated the overarching issue is what you didn't hear from Mr. Richardson which was the parking lot and not to be confused with the marina, that the parking lot was ever conforming under the existing zoning ordinance at any time. And what is before you is, was that parking lot ever conforming under zoning ordinance and the answer is no it's not. Mr. Richardson brought up statute of limitations but that is not what's before you. He read from Mr. Hardison's narrative "An existing parking lot serving a use in a different zoning district would be treated as a non-conforming use. This means a use that occurs when a building or land lawfully occupies a property prior to the current ordinance, but is no longer permitted". So the question is, when did that parking lot comply with an ordinance and it's that simple. Did it ever comply with a zoning ordinance and if the answer is no it's a illegal non-conforming use and if the answer is yes then it is a legal non-conforming use.

Board Member Levy address Mr. Potter, he was a resident at Spinnaker Point, there are three gates, one is at the marina, there's the Spinnaker Point big gate and there's a Marina Drive gate which is the gate that the residential homes use. He said when he lived there all three of those gates were locked and you needed a card or a code to get in. So the people that used that parking lot for the marina use must have been given a code and wanted to know if that is a true statement. Mr. Potter did not know from a factual stand point the answer to his question. He said the reason for his question or statement was he was only given the code for the main gate for the apartments only and feels that someone must have given the boat owners a gate code.

Board Member Shue asked where do the people that use the marina park. Mr. Potter stated there is marina parking and there is also a CUP for additional parking to be added in the area. Mr. Potter wanted to add to the record that Mr. Richardson is an attorney and an advocate he's not a witness. So to the extent that he's testifying I would object to the facts and you are supposed to put on evidence and sworn testimony and would like to have an objection for the record.

Mr. Richardson addressed Board Member Levy stated the only people that use that parking lot are the people that have boat slips in the marina and there are 69 boat slips. If that parking lot is taken away we will lose the ability to service the entirety of that marina and the boat slip users and there are only 37 spaces at the marina now. Only boat slip owners have access to that parking lot so the marina property will not suffice if the parking lot is taken away. Stated that the decision of the town staff and Mr. Hardison be upheld.

Chairman Hartsell stated to summarize the request of the applicant is to consider an appeal of the decision made by planning and development from section 40-72 permitted use table, he asked Mr. Potter. Mr. Potter replied it is Mr. Hardison's interpretation of the permitted use table and Mr. Hardison agreed. It is the decision of this board to either overturn the ruling of the Zoning Administrator or to uphold the decision.

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ACTION: Board Member Levy made a motion to uphold the decision, all were in favor (5-0). Chairman Hartsell the decision of the Zoning Administrator has been upheld.

Vote: UNANIMOUS

4. **NON-AGENDA ITEMS**

Mr. Hardison welcomed the new Board of Adjustment members. Chairman would like to have a training for the new members sometime in the new year.

5. **ADJOURNMENT**

Chairman Hartsell made a motion to adjourn at 7:17 p.m., all were in favor (5-0).

LeAnn Pierce
Mayor

Steve Shuttleworth
Council Member

Lynn Barbee
Council Member



Jay Healy
Mayor Pro Tem

JoDan Garza
Council Member

Ed H. Parvin
Interim Town Manager

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

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

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

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

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

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

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

FINDINGS OF FACT

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

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

19. The CUP referenced in the Applicant's Violation Complaint was issued by the Town in 2005 for 401 Marina St. and approved a project consisting of the demolition of an existing building and the development of 24 residential units, restaurant, ship store, sales office, fitness center, laundry and bath facilities, and a marina dry storage area.
20. The 2005 CUP project, however, was never built, and the CUP expired in 2007 along with its conditions.
21. Town Staff notified Mr. Sanderford that the Town could not enforce conditions in the 2005 CUP because that CUP had expired and the project was never built.
22. The Applicant also submitted pictures with the Violation Complaint depicting boat and trailers being stored in the parking lot.
23. Town Staff notified the Marina that the subject parking lot should be utilized for parking of vehicles and not for boat parking, trailer parking and equipment parking.
24. The owner of the Marina complied with Town Staff's directive and removed the boats and trailers from the parking lot.
25. Mr. Potter, attorney for the Applicant, requested that Town Staff clarify whether the use of the Subject Property as a parking lot for the Marina is a permitted use under the Zoning Ordinance.
26. In response to Mr. Potter's request, Town of Carolina Beach Planning & Development Director Jeremy Hardison subsequently issued a written determination that the parking lot is allowed based upon the following:
 - a. The area was zoned uniformly as RA-6 until August 8, 1994, when the owners of the Marina petitioned the Town to rezone the Marina from RA-6 to MB-1.
 - b. The parking lot at issue is shown on the Plat for Section 2 of Oceana recorded on September 28, 1994, in Map Book 34, Page 143, New Hanover County Registry.
 - c. The recorded plat designates the parking area at issue as "reserved for parking by Ocean Limited Partnership", which owned the Carolina Beach Yacht Club & Marina at that time.
 - d. The parking lot at issue was approved by the Town as a designated parking area that included an easement to access the Marina.
 - e. The Town's previous approval of the subject parking lot being reserved for the Oceana Limited Partnership remains in effect today.
27. On August 26, 2019, the Applicant filed the subject appeal to the Board of Adjustment from Mr. Hardison's interpretation and determination, referencing Section 40-72 Permitted Use Table as the Section(s) of the ordinance being appealed.

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

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

CONCLUSIONS

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

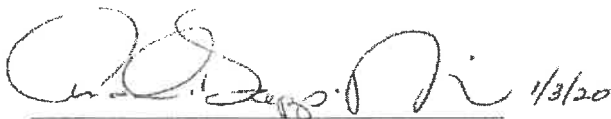
4. A nonconforming use is a use or nonconforming situation that occurs when a building or use lawfully occupies a property prior to the current ordinance but is no longer permitted under the current ordinance (Zoning Ordinance Section 40-548).
5. A nonconforming use has a right to occupy the property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

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

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



Wayne Hartsell, Sr., Chairman



Secretary to the Board

Date Order Filed with Planning Office: JANUARY 3, 2020

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

