

CAROLINA BEACH

Planning and Zoning Commission

Thursday, October 10, 2024 - 6:00 PM

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



MINUTES

CALL TO ORDER

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

PRESENT

Chairman Wayne Rouse

Vice Chairman Jeff Hogan

Commissioner Melanie Boswell

Commissioner Ethan Crouch

Commissioner Bill Carew

Commissioner Lynn Conto

ABSENT

Commissioner Todd Piper

ALSO PRESENT

Community Development Director Jeremy Hardison

Senior Planner Gloria Abbotts

Planner Haley Moccia

APPROVAL OF MINUTES

1. September 12, 2024 – P&Z Minutes

ACTION: Motion to approve the minutes as written

Motion made by Chairman Rouse, seconded by Vice Chairman Hogan

Voting Yea: Chairman Rouse, Vice Chairman Hogan, Commissioner Boswell, Commissioner Crouch, Commissioner Carew, Commissioner Conto

Motion passed 6-0

STAFF REPORT ON RECENT DEVELOPMENTS

Mr. Hardison reported the following:

Project updates

- Boardwalk bathroom: This project went to bid and has been awarded; construction is expected to start in January.

- Ocean Boulevard sidewalk/resurfacing: Sidewalk construction will start in November; next week the N.C. Department of Transportation (DOT) is going to resurface the road, which should be done quickly.
- Lake pump house: The housing structure will be elevated, and construction will start in November; 3 pumps will be housed in this facility.
- Stormwater open house: This will be held October 23 from 4:00 to 6:00 PM.

Storm damage assessments

- 195 residential
- 36 commercial

Homes being raised

- 3 homes are underway now through the Federal Emergency Management Agency (FEMA) elevation grant. Also, preparation is happening now for FEMA’s FY 2024 Flood Mitigation Assistance Program cycle. Quite a few applications are in, and letters were sent out previously to flood-prone buildings.

New businesses

- Island Burgers – 254 North Lake Park Boulevard (relocation)
- Carolina Beach Motel – 209, 211, and 213 Raleigh Avenue

BeBot beach sweeper

- This will be running after November 15.

PUBLIC COMMENT

None

PUBLIC HEARINGS

2. Text Amendment to Amend Article 7, Section 7.3 Definitions
Applicant: North Pier Holdings LLC

Applicant North Pier Holdings LLC is applying for a text amendment to add a definition for Building Footprint in Article 7, Section 7.3 Definitions of the Unified Development Ordinance (UDO). The applicant is pursuing this text amendment to add clarity for the residents of the Town on what is considered part of a building footprint.

The applicant’s proposed definition is: Building footprint means where the enclosed area of a building comes out of the ground. It is the literal footprint of the exterior walls of the enclosed area of the building as they touch the earth. This does not include porches, terraces, overhangs, awnings, driveways, or parking lots.

Historically, Town staff has interpreted building footprint to be the building’s exterior walls, elevated decks, covered decks, staircases, chimneys, cantilevers, roof overhangs, attached garages, attached storage areas, and elevators.

The text amendment proposed by the applicant would put more limitations on the renovations of non-conforming structures. The spirit and intent of this section is to allow a homeowner or business owner the ability to make their structure “whole” to be able to rebuild or repair what they currently have.

The Land Use Plan does not mention building footprint explicitly, but it does state the following: “It is the explicit desire of the community that the Future Land Use Map (FLUM) not prevent the possibility of constructing a single-family home or rebuilding a structure, and the FLUM should not be construed to do such.”

Town staff does not recommend approval of the text amendment because of the ramifications to the non-conforming sections, which would prevent a structure’s ability to be rebuilt or renovated to the existing dimensions of the building. Additionally, the text amendment would be inconsistent when compared to how other communities have defined building footprint.

Chairman Rouse said he has a conflict and needs to recuse himself from this item. He said he has some business interests with the applicant, including several condo units that are under contract.

Attorney Corrie Lee, representing the applicant, said the application is for generally applicable text for the Town, and any decision would be advisory and not binding on Council, so she asked Chairman Rouse that he not recuse himself.

Chairman Rouse said he would rely on the opinion of other Commissioners.

Commissioner Carew asked if the outcome of this item influences whether Chairman Rouse is paid. Chairman Rouse said he thinks he will get paid regardless in November whenever the properties are allowed to close. Commissioner Carew asked if the decision influences whether they close. Chairman Rouse said he doesn’t think so, but he wants to be transparent.

Vice Chairman Hogan said he doesn’t want Chairman Rouse to recuse himself, but sometimes even just a Commissioner knowing an applicant can lead the public to perceive a conflict.

Commissioner Boswell said she thinks a business interest and financial gain are two different things, and the vote will not determine how much Chairman Rouse gets paid if the units are already under contract. She said if he and his immediate family are not part of the applicant’s entity, then she doesn’t have a problem with Chairman Rouse voting. She asked Mr. Hardison for his opinion.

Mr. Hardison said this is an application for a general text amendment that would affect all properties in the Town, and he asked Chairman Rouse if he would have a financial benefit or impact from the decision. Chairman Rouse said he doesn’t think so, but the fact remains that he does have some property under contract with the applicant and he wants to be upfront. Mr. Hardison said the Commission should decide.

Commissioner Crouch said he would defer to Chairman Rouse’s personal good judgment. He said it’s important to him to maintain goodwill and credibility with the public.

Commissioner Conto said in a small town it's hard not to be involved in business with applicants. She said Chairman Rouse has demonstrated integrity and neutrality, so she doesn't think he should recuse himself but it's up to him.

ACTION: Motion that Chairman Rouse be recused from this hearing

Motion made by Chairman Rouse, seconded by Commissioner Crouch

Voting Yea: Chairman Rouse, Vice Chairman Hogan, Commissioner Boswell, Commissioner Crouch, Commissioner Carew, Commissioner Conto

Motion passed 6-0

Ms. Moccia presented the details. She reviewed the background and proposed definition and said the UDO currently has no definition for building footprint.

Commissioner Carew said there are municipalities with similar definitions to the Town's implied definition. He said the Town has had a history of interpreting the footprint as all items that would cover the ground as you look down.

Mr. Hardison said the in the absence of a specific definition, it has been staff's interpretation that the footprint would include decks, terraces, and verandas so a property owner can rebuild what they have.

ACTION: Motion to open the public hearing

Motion made by Vice Chairman Hogan, seconded by Commissioner Boswell

Voting Yea: Vice Chairman Hogan, Commissioner Boswell, Commissioner Crouch, Commissioner Carew, Commissioner Conto

Motion passed 5-0

Ms. Lee of 330 Military Cutoff Road Suite A-2 in Wilmington said the text amendment proposes amending the previous code as well as the new UDO. She said this is important because with the adoption of North Carolina General Statutes Chapter 160D, any property owner who vested under the old code is subject to the old code. Ms. Lee said they looked to professionals to help define building footprint, and they have a letter from a professional architect who has defined it almost identically to what the applicant is submitting. She said they agree that a property owner should be able to rebuild and be made whole, but the intent of this modification would allow a structure to add a porch or awning if it didn't have one previously. Ms. Lee said habitable space is what they are concerned with for the purposes of defining a non-conforming use, and this definition is to explicitly say if you add a porch or awning to a house, you are not expanding the non-conformity. She said there are safeguards in place, such as compliance with setbacks and not increasing lot coverage, and they believe the proposal is consistent, reasonable, and in the public interest. Ms. Lee said stormwater management would not be a concern because the surface underneath any items not included in the footprint would have to be pervious.

Commissioner Carew said a covered porch with gutters that run water out to the driveway would mean there is an additional area that is an impervious surface connected to another impervious surface. Ms. Lee said they would not consider a slatted deck part of the built-upon area.

Vice Chairman Hogan said once you put a cover on a deck or porch, water is not running through and going underneath.

Commissioner Carew asked how the text amendment would improve the community. Ms. Lee said it ensures that property owners know exactly what's expected of them when trying to come into compliance, gives everybody a fair shake, and allows people to use their property to the fullest extent.

Commissioner Carew asked if staff is concerned that stairs are not covered by this proposed text amendment. Mr. Hardison said the proposed definition is a lot more restrictive than what the current code or interpretation will allow.

Commissioner Conto asked what is driving this request and what won't work without it. Ms. Lee said the applicant wants to ensure there can be adequate porches and decks on the buildings for full enjoyment of the property. Commissioner Conto said she thinks the project is beautiful and an improvement.

ACTION: Motion to close the public hearing

Motion made by Vice Chairman Hogan, seconded by Commissioner Boswell

Voting Yea: Vice Chairman Hogan, Commissioner Boswell, Commissioner Crouch, Commissioner Carew, Commissioner Conto

Motion passed 5-0

Commissioner Conto asked for Mr. Hardison's advice. Mr. Hardison said staff has no objection to defining building footprint, but there are difficulties with administering the definition that is presented tonight. He said he does not agree with how it would be applied in the field if someone's home was damaged through no fault of their own and they needed to make it whole. Mr. Hardison said the 4 walls of a structure could be rebuilt, but questions remain about steps, decks, and porches, and he thinks the proposal needs more clarity.

Commissioner Boswell said she has issues with the proposed text amendment because the Commission spent weeks on non-conforming and conforming structures as part of the UDO process before approval in August. She said it didn't come up that this needed a specific definition, and no coastal communities define building footprint. She said there are smaller lots here, and we need things to be part of the footprint.

Commissioner Crouch said he is not in favor of the proposed text amendment because it will impact the entire building code, and he's always very concerned about taking broad strokes. He said he's hesitant to do this without a very strong recommendation from staff.

Commissioner Conto said she is concerned about unintended consequences, and there is a reason why none of the surrounding municipalities have a specific building footprint definition.

Commissioner Carew said he likes the project and thinks it looks wonderful, but he gets a bad gut feeling about modifying the code to accommodate a specific circumstance. He said he doesn't see enough upside about the proposal to validate it.

Vice Chairman Hogan said the project is amazing, and he thanked the applicant for taking a dilapidated building and making it look beautiful. He said while a definition may be a good idea in the future, there are ambiguities with this one and it's not suitable for staff, so he can't get on board with it.

ACTION: Motion for denial; the Commission, whereas in accordance with the provisions of the North Carolina General Statutes, does hereby find and determine that the adoption of the following text amendment for Building Footprint in Section 7.3 Definitions is inconsistent with the goals and objectives of the adopted Land Use Plan and other long-range plans

Motion made by Commissioner Boswell, seconded by Vice Chairman Hogan

Voting Yea: Vice Chairman Hogan, Commissioner Boswell, Commissioner Crouch, Commissioner Carew, Commissioner Conto

Motion passed 5-0

Vice Chairman Hogan said this vote is not an indication that the Commission does not like the project.

NON-AGENDA ITEMS

None

ADJOURNMENT

ACTION: Motion to adjourn

Motion made by Chairman Rouse, seconded by Vice Chairman Hogan

Voting Yea: Chairman Rouse, Vice Chairman Hogan, Commissioner Boswell, Commissioner Crouch, Commissioner Carew, Commissioner Conto

Motion passed 6-0

Chairman Rouse adjourned the meeting at 6:53 PM.