

LeAnn Pierce
Mayor

Steve Shuttleworth
Council Member

Lynn Barbee
Council Member



Jay Healy
Mayor Pro Tem

JoDan Garza
Council Member

Bruce Oakley
Town Manager

Town of Carolina Beach
1121 N. Lake Park Boulevard
Carolina Beach, North Carolina 28428
TEL: (910) 458-2999
FAX: (910) 458-2997

ORDER GRANTING A CONDITIONAL USE PERMIT MODIFICATION

Project: Day care facilities at Seaside Chapel

Location: 105 Dow Road

Applicant: Seaside Chapel

THIS MATTER came before the Town of Carolina Beach (the "Council") for public hearing on October 13th, 2020 at the Town of Carolina Beach Town Hall to consider an application submitted by Seaside Chapel Independent Church ("Applicant") for a conditional use permit for property located at 105 Dow Road to operate a day care facility. The Applicant was represented by Ned Barnes. After the opening of the evidentiary hearing, the following individuals were sworn in by the Town Clerk: Miles Murphy, Jeremy Hardison, Ned Barnes, and Dana Vess.

Prior to the presentation of any evidence, an overview of quasi-judicial hearings was presented by the Town Attorney and Council was advised that its decision must be based on substantial, competent, and material evidence presented during the hearing.

Prior to the presentation of evidence, Councilmembers were advised to disclose ex parte communications and fixed opinions or bias. After the disclosure of email correspondence sent to individual Councilmembers, the Applicant's attorney was afforded an opportunity to ask questions of Council regarding the disclosures, but no Councilmembers were requested to be excused.

The verbatim minutes of the standing hearing and video of the CUP hearing are the best evidence of the testimony of the witnesses.

FINDINGS OF FACT

Miles Murphy, Senior Planner for the Town of Carolina Beach, presented Council with an overview of the Conditional Use Permit Application filed by Seaside Chapel. Mr. Murphy was subject to questions of Council and cross examination by the Applicant's attorney.

Mr. Murphy testified that:

1. Seaside Chapel Independent Church is the owner of a parcel located at 105 Dow Road in Carolina Beach, NC.
2. The property is zoned R-3.
3. The square footage property is 109,844 square feet/2.52 Acres.
4. Seaside Chapel is proposing to operate a day care facility and add a small playground
5. Day care facilities are allowed in the R-3 zoning district with a CUP.
6. The proposed site plan meets all zoning requirements for a day care located in the R-3 Zoning District
7. The proposed site plan/project meets all of the 7 specific standards and 4 general conditions required for the approval of a Conditional Use Permit (Detailed Below)

8. The proposed project must meet all Federal, State, and Local requirements for day care operations
9. SW did not require any improvements to parking or other facilities at this time

Ned Barnes testified that:

- 1.

Specific Standards

- (1) Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;
 - *Ingress and egress will remain via Charlotte Ave*
 - *The drive aisle design will accommodate drop-off traffic*
- (2) Off-street parking and loading areas where required, with particular attention to the items in (1) above and the economic, noise, glare, or odor effects of the conditional use on adjoining properties and properties generally in the district;
 - *Parking will be contained on the property*
- (3) Refuse and service area, with particular reference to the items in (1) and (2) above;
 - *Refuse collection will not change*
- (4) Utilities, with reference to locations, availability, and compatibility;
 - *Utilities will not change*
- (5) Screening and buffering with reference to type, dimensions, and character;
 - *A landscape buffer is being required on the 8th street side of the proposed fenced playground area*
- (6) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;
 - *Signage will potentially be proposed and will have to meet all standards zoning requirements in the future*
- (7) Required yards and other open space and preservation of existing trees and other attractive natural features of the land.
 - *There is substantial change to any required yards or open spaces*

General conditions. The *town council*, in granting the permit, must also find that all four (4) of the following conditions exist;

- (1) 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 by the issuance of the C.U.P.;
 - *The density falls within the standard R-1 density requirements and the proposed structure follows the setback requirements*
- (2) That the use meets all required conditions and specifications;
 - *The proposed CUP does meet all required conditions and specifications*
- (3) That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and
 - *The proposed structure/use will conform with the neighboring properties.*
- (4) 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 town land use plan and policies.
 - *The desired Future Land Use of the Residential 3 area includes single-family units only. Building height will not exceed a 40' height maximum and shall be consistent with Section 4.3, II. Management Topic: Land Use*

Compatibility Policies, 31 (B). Density will be low with a minimum of 12,000 square foot lots and around 3.5 units per acre. Lot coverage will not be allowed to exceed 40%. New multi-family development shall be prohibited.

The project will be in general conformity with the Land Use Plan and in harmony of the area.

After considering the testimony, evidence presented, and arguments of counsel, Council deliberated.

CONCLUSIONS OF LAW

It's concluded that the Specific and General Standards are met

It is ordered that the application for the issuance of a Conditional Use Permit by Marlow Construction LLC be granted, subject to the following conditions:

- 1) Prior to issuance of building permit, all local, state, and federal approval letters, permits, and final site plan shall be submitted to and approved by the Town of Carolina Beach.
- 2) Major changes to approved plans and conditions of development may be authorized only by the town council after review and recommendation by the planning and zoning commission.
- 3) Outdoor artificial lighting fixtures shall be designed and positioned so that the point source of light from a light fixture is not directly visible from adjacent properties and/or right-of-ways.
- 4) The Conditional Use Permit is subject to expire on 10/13/23 if construction of the project has not started.

Councilmember . The Motion passed unanimously.

Ordered this 13th day of October, 2020

LeAnn Pierce, Mayor

Date

ATTEST: _____
Kimberlee Ward, Town Clerk

Date