



## AGENDA ITEM COVERSHEET

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

**DEPARTMENT:** Planning & Development

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

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

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### **BACKGROUND:**

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

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

### **Non-conforming**

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

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

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

### **History of the property**

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

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

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

Staff’s Determination

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

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

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

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

Attachments

1. Appeal Application
2. Location Map

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