

# CAROLINA BEACH

Planning and Zoning Commission Meeting

Thursday, December 14, 2023 - 6:00 PM

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



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## 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 Todd Piper

Commissioner Bill Carew

Commissioner Lynn Conto

### ALSO PRESENT

Planning Director Jeremy Hardison

Senior Planner Gloria Abbotts

### APPROVAL OF MINUTES

1. September 14, 2023 – P&Z Minutes

### **ACTION:** Motion to approve the minutes

Motion made by Chairman Rouse, seconded by Vice Chairman Hogan

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

*Motion passed unanimously*

### STAFF REPORT ON RECENT DEVELOPMENTS

Ms. Abbotts reported the following statistics for the past three months:

#### Permitting

- 70 permits (renovation, repair, grading, additions, fences)
- 17 residential new construction
- 24 certificates of occupancy

#### Code Enforcement

- 34 complaints received

- 15 resolved

#### Demos

- 904 South Third Street
- 903 Ocean Boulevard
- 308 Raleigh Avenue

#### New Businesses

- Chloela Home Furniture & Design – 1206 North Lake Park Boulevard, Suite E
- Coiffed (dog grooming) – 1311 Bridge Barrier Road
- iRide CB – 1401 North Lake Park Boulevard, Suite 44 (new location)
- Remini’s (restaurant) – 102 Cape Fear Boulevard
- Seaworthy (restaurant) – 604 North Lake Park Boulevard
- Sun Fun Rentals – 505 North Lake Park Boulevard (new location)

#### Town Council and Other Updates

- Conditional Zoning for Putter Pub, 801 Saint Joseph Street – approved by Council October 10
- Town tree maintenance ordinance for Tree City USA – approved by Council October 10
- Sidewalk café ordinance – approved by Council November 14
- Front setback variance for pool and front deck, 311 Spencer Farlow Drive – granted by Board of Adjustment December 5
- 219 Myrtle Avenue – certificate of occupancy granted
- Hidden Cove 8-unit Planned Unit Development (PUD) – requested first certificate of occupancy
- Proximity – underway; still having discussions about stoplight on Winner Avenue
- Social on 2nd – phase one is complete
- Glenn Avenue 12-unit PUD – upcoming at next meeting

#### **PUBLIC COMMENT**

None

#### **DISCUSSION ITEMS**

2. Conditional Zoning Modification to Consider an Outdoor Seating Area and Landscaping for the Event Venue/Bar at 205 Charlotte Avenue in the Central Business District  
Applicant: Kindred Carolina Beach, LLC

Applicant Kindred Carolina Beach, LLC, was approved for an Event Venue/Bar at 205 Charlotte Avenue as a use in the Central Business District (CBD) on July 11, 2023. Event Venues/Bars are allowed through the approval of Conditional Zoning (CZ) in the CBD. The proposal approved in July did not include any outdoor areas. Sec. 40-261.(o)(6)c. requires that any changes to the outdoor areas shall be considered a major modification of the CZ approval.

The applicant is proposing landscaping, outdoor seating, and an exterior walk-in cooler/freezer to the outside of the building. The proposed outdoor seating area is 16 feet by 32 feet. The proposed

landscaping area consists of hedges, shrubbery, synthetic turf, and planters surrounding the building. The proposed walk-in cooler/freezer is 7.5 feet by 13.5 feet. Approximately 525 square feet of the landscaping proposal includes a new paver walkway. No changes are proposed to the existing parking lot and driveway cut.

Alcohol point of sale in an outdoor area shall be located a minimum of 20 feet from any property line. Outdoor areas designated for point of sale and consumption shall be designated on the site plan and shall have a barrier that is 4 feet to 6 feet in height. Outdoor alcohol sales are not proposed.

The parking requirement for Event Venues is one per 110 square feet of indoor gross floor area. No parking shall be required for outdoor gross floor area if the establishment is located within 500 feet of public parking spaces. A 50% reduction in the parking requirement shall apply to outdoor gross floor area if the establishment is not within 500 feet of public parking spaces. The total indoor gross floor area of the building is 6,990 square feet. The total number of required spaces for the project is 64. There are 148 total spaces within 500 feet.

The applicant is requesting a waiver to the landscaping requirement to accommodate an existing propane tank. Landscaping requirements may be waived at the discretion of the Commission and Council on projects requiring CZ. There is an existing 6-foot fence between the building and the neighboring properties in the MX district.

Event Venues must comply with all Alcoholic Beverage Control (ABC) and/or Alcohol Law Enforcement (ALE) standards. On-premise alcohol sales are limited to the duration of the event.

As part of the application process, a community meeting is required. The applicant held the required meeting on November 10, 2023, and six people attended. Based on comments from the meeting, the applicant can place conditions on the project to help mitigate the impacts and concerns from neighboring properties.

#### Proposed conditions

1. Outdoor sales of alcohol are not permitted.
2. The use and development of the subject property shall comply with all regulations and requirements of any other Federal, State, or Local law, ordinance, or regulations.
3. A 20-foot driveway cut must remain open and accessible to the parking lot.
4. A Type B landscape buffer shall be provided and delineated along the perimeter of the property except in areas waived by the Commission and Council.
5. Shall have a barrier that is 4 feet to 6 feet in height that meets ABC standards.

Ms. Abbotts presented the details. She showed the site plan approved in July and a proposed site plan with the changes. Ms. Abbotts also reviewed criteria the Commission must consider when evaluating the application. She said the proposal is in general conformity with the 2020 Land Use Plan, and staff recommends approval with the proposed conditions.

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

Motion made by Chairman Rouse, seconded by Vice Chairman Hogan

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

*Motion passed unanimously*

Applicant Michael Urti of 513 Monroe Avenue reviewed the site plan and discussed measures taken to address stormwater concerns, such as replacing an impervious walkway with pervious pavers and removing a large concrete pad in the parking lot and replacing it with pervious turf. He said plans call for alcohol consumption but not actual sales in the outdoor area, and high shrubs will be used to make the space more private.

Commissioner Carew asked Mr. Urti to give examples of events other than weddings that might be hosted at the venue. Mr. Urti said there are plans for comedy shows and cigar/whiskey tastings. He said the outdoor area is not very big, so there are no large events planned for it. Commissioner Carew asked about outdoor live music. Mr. Urti said he doesn't envision having live music in the outdoor space.

Vice Chairman Hogan asked how many seats are planned for the outdoor area on the Charlotte Avenue side. Mr. Urti said 12 to 18 seats. Vice Chairman Hogan asked about the time frame that those seats would be used. Mr. Urti said weddings must be over at 11:00 PM and cleaned up by midnight, but he envisions the outdoor area will be used mainly in the 7:00 PM to 8:00 PM time frame.

Mr. Hardison clarified that the application is for authorization to have consumption and sales of alcohol in the outside area, even though the applicant is not currently planning to have sales outdoors.

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

Motion made by Chairman Rouse, seconded by Vice Chairman Hogan

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

*Motion passed unanimously*

Commissioner Conto said she thinks this project serves to enhance the downtown area.

Commissioner Crouch said he wants to have a discussion about the proposed conditions.

Commissioner Boswell said she thinks the project is a great addition to the Town, and she plans to support the proposal as it currently stands.

Commissioner Carew said he thinks this project is a cornerstone for redevelopment of the block, so he is in favor of it. He said he has reservations about the outdoor area and noise for adjacent residential dwellings, but he likes proposed condition number one.

Commissioner Piper said he wants to be sure the outdoor area does not pose problems for surrounding residents, but he will go with whatever staff recommends.

Vice Chairman Hogan said this is a great project, and his original concern was outdoor noise. He said he is satisfied after hearing clarification that most of the events will be inside-driven, so he is in favor of the proposal.

The Commission discussed proposed condition number four. Mr. Hardison said the landscape buffer could be moved to the front of the existing propane tank.

Chairman Rouse said he would like to see landscaping from the propane tank to the west.

Commissioner Crouch said he is torn about proposed condition number one because he knows the reputation of the current applicant is good, but the regulations will be tied to the property, which could be sold to another party in the future. He said his main concern is potential impacts to neighbors, and he doesn't want the regulations to create an area that could operate like a bar.

Mr. Hardison said proposed condition number one should actually state that outdoor sales of alcohol are not permitted within 20 feet of any property line.

Commissioners also discussed adding language to proposed condition number four so the landscape buffer would be relocated in front of the existing propane storage tank and angled west to the property line.

**ACTION:** Motion that whereas in accordance with the provisions of the North Carolina General Statutes, Planning and Zoning does hereby find and determine that the adoption of the Conditional Zoning District modification to allow for an outdoor area for the Event Venue/Bar at 205 Charlotte Avenue is consistent with the goals and objectives of the adopted Land Use Plan and other long-range plans and the potential impacts on the surrounding area are mitigated by the approved conditions with the conditions of:

- Outdoor sales of alcohol are not permitted within 20 feet of the property line.
- A Type B landscape buffer shall be permitted in front of the propane tank on the west side of the property.
- The use and development of the subject property shall comply with all regulations and requirements of any other Federal, State, or Local law, ordinance, or regulations.
- A 20-foot driveway cut must remain open and accessible to the parking lot.
- Shall have a barrier that is 4 feet to 6 feet in height that meets ABC standards.

Motion made by Vice Chairman Hogan, seconded by Commissioner Conto

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

*Motion passed unanimously*

3. Consider a Special Use Permit Modification for Additional Boat Slips located at 401 Marina Street PID 313115.74.1321.000 & 313115.64.8036 in the Marina Business & R-1B District  
Applicant: CBYC, LLC

Chairman Rouse opened the evidentiary hearing and said this is a quasi-judicial hearing, much like a court hearing. He said there are specific procedures required by State law in making the decision, which must be based on competent, relevant, and substantial evidence in the record. He asked if Commissioners had any impartiality to disclose, recusal to offer, or ex parte communications to report. All Commissioners said no.

Individuals planning to speak on the matter were sworn in.

Applicant Carolina Beach Yacht Club and Marina is requesting a Special Use Permit (SUP) modification. In 2019, the applicant applied to add an eating and drinking establishment and a ship store located on a barge to the marina located at 401 Marina Street. In January 2020, an SUP was denied because it was not passed by Council (2-2 vote). Subsequently, the applicant filed a petition seeking an appeal. The Oceana Owners Association then filed a verified motion to intervene. The hearing of the appeal was canceled based on the parties entering into an agreement. The agreement was executed in December 2020 to issue the SUP with conditions.

The modification under consideration includes expanding the number of boat storage spaces. The marina is approved for 69 boat storage spaces (slips). During a zoning final inspection of the barge, it was discovered that several boat storage spaces were added, including multiple boats being parked in one designated space. Upon another inspection, the added boat storage spaces were removed, but the applicant would like to pursue expanding the marina's boat storage spaces from 69 to 89. By adding boat storage spaces, it also increases the number of required parking spaces. The parking requirement for Commercial Marinas per Article V. is one parking space per wet boat storage space, one per two dry storage, one per service bay, one per two employees required for all other on-site uses. Parking is being provided for the wet boat storage space, employees, and all other on-site uses.

The modification consists of splitting 22 boat storage spaces from 45-foot storage spaces into two 22.5-foot boat storage spaces. The following are the proposed modifications to the plan:

- Removed ground floor office space from the building to convert as part of the existing residential unit on second floor.
- Reduced one storage space for the floating barge. It was depicted as two designated boat storage spaces.
- One of the original boat storage spaces that was counted in the 69 did not transfer to the current owner, as it was previously sold to a property owner of a lot in the Oceana neighborhood.
- The footprint of the approved barge, 40 feet x 120 feet, is larger than what was built on site, 24 feet by 96 feet, thus decreasing the amount of parking needed for the eating and drinking establishment and retail area.
- Relocating the dumpster closer to Georgia Avenue to accommodate additional parking.

- Expanding parking area with spaces being added closer to the property lines that do not meet the landscaping requirements; applicant is requesting a wavier.
- Proposed food truck that will be located in the 30-foot Coastal Area Management Act (CAMA) setback buffer. It cannot be permanent and would need to be mobile.
- Added an additional floating dock.

Eleven parking spaces are proposed to be added to accommodate the modifications:

- Four additional spaces are proposed to be located in the parking lot adjacent to the marina building.
- Seven spaces are proposed in the Oceana parking lot.

The marina building parking area is located in the MB-1 zoning district. The Oceana parking lot is located in the R-1B zoning district. The Oceana parking lot is in a residential zoned area and is considered non-conforming, meaning it would not be allowed under the current ordinance to have a parking lot serving a commercial business located in a residential area. Sec. 40-425. - Extension or enlargement of nonconforming situations, including land uses and buildings, states that increase in volume, intensity, or frequency of non-conforming use may be allowed. The volume, intensity, or frequency of use of property where a non-conforming situation exists may be increased and the equipment or processes used at a location where a non-conforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and in no violations of other subsections.

Note: 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. Neither encroachment was depicted on the approved site plan. The applicant opted to relocate these spaces in the Oceana parking lot under a minor modification approved by staff. There has been an appeal to staff's determination that these spaces located in the Oceana subdivision are not allowed under Sec 40-425 Extension or enlargement of a non-conforming situation. The Board of Adjustment will hear the appeal on December 18.

Mr. Hardison presented the details. He reviewed the site plan approval process and adjacent uses as well as the seven specific standards and four general conditions to be considered. He said since 2020, the Town installed an 8-foot fence along the property line to prevent encroachment on Town well property.

Proposed conditions from staff:

1. Type B 10-foot landscaping requirements to be waived for the additional proposed new parking spaces.
2. Food truck will need to meet Sec. 14-21.
3. Major changes to approved plans and conditions of development may be authorized only by Council after review and recommendation by the Commission in the same manner as outlined in this article for original submission.

4. Record the Georgia Avenue 30-foot Town easement to a 30-foot Town public right-of-way prior to the issuance of a permit for the increased boat storage spaces.
5. Outdoor artificial lighting fixtures shall be designed and positioned so the point source of light from a light fixture is not directly visible from adjacent properties and/or rights-of-way.
6. Must meet all Local, State, and Federal requirements.

Mr. Hardison said staff is recommending approval with the proposed conditions.

Chairman Rouse asked if the Town easement is owned by the applicant. Mr. Hardison said yes and clarified that it's a Town access easement, not a public easement.

Commissioner Crouch asked if there will need to be any roadway improvements when the easement changes. Mr. Hardison said no changes are anticipated and it will act the same as it has for 30 years since it was paved.

Commissioner Piper asked if the food truck will be owned by the marina or a separate entity. Mr. Hardison said he does not have information about the food truck agreement.

Chairman Rouse asked the applicant to come forward to present evidence and legal arguments in support of the request.

Attorney Grady Richardson, representing the applicant, asked to move the staff report and the recommendation for approval into the record of evidence. The Commission agreed to accept it into the record.

Mr. Richardson said regarding proposed condition number four, the Town has given an intent to condemn the client's property from an easement only to taking the property entirely, so the applicant would like that proposed condition to be removed so both parties can work through the issue before the request comes before Council. He said if the Commission wants to recommend approval with proposed condition number four, the applicant wants objection noted in the record.

Regarding the interior parking lot behind Oceana's gates, Mr. Richardson said the applicant has allowed Oceana to use the existing nine spaces on a first-come, first-served basis for residents and guests, and nothing about that is changing. He said there is a pending lawsuit by Oceana regarding who can and cannot access that parking lot, and until a judge rules as to who can and cannot access that it is being used in conformity with what Oceana has asked. Mr. Richardson said all other parking spaces are exclusive to the marina.

Chairman Rouse asked any other speakers on the matter to come forward.

Olin Furr of 440 Oceana Way, who is President of the Oceana Owners Association, said some of the things presented tonight are not on the up-and-up. He said Carolina Beach Yacht Club and the Town



have violated agreements and Town ordinances. Mr. Furr said CAMA is also in this equation when it comes to changing boat slips and the food truck setback area. He said the Town ordinance indicates anything that causes an increase in parking is a major modification, but the Town treated relocation of spaces in the Oceana parking lot as a minor modification approved by staff. Mr. Furr said parking calculations have not been done properly and the modification request does not meet the requirements that it should. He said there is already a problem with traffic congestion at certain times, and the Freedom Boat Club operating inside the marina hasn't even been taken into account in terms of parking for their employees and expansion plans. Mr. Furr also said the dumpster should remain where it is now, and moving it to the front corner is a slap in the face because of its proximity to a neighbor's porch. He said this request shows the applicant does not care about the surrounding community.

James Sanderford of 418 Marina Street, who is Vice President of the Oceana Owners Association and a licensed professional civil engineer, said there is already an existing parking issue due to traffic from the marina and Freedom Boat Club, which are two businesses operating in one area. He said the bar barge hasn't even opened and will generate more traffic. Mr. Sanderford said one of the general conditions is that the use must not endanger public safety, but this is already happening because emergency vehicles do not have the necessary travel width when vehicles are parked in the street and the public is unloading in the street. He said due to the additional volume of traffic generated by the expansion, the entrance to Oceana and other adjacent neighbors' access will be blocked at all times. Mr. Sanderford said the agreement between the marina, Town, and Oceana states additional parking will not be allowed in Oceana, and this matter is being taken up in court. He also said the handicapped spaces are not Americans with Disabilities Act (ADA) compliant, and the location of the dumpster is problematic.

Jonathan Pease of 420 Marina Street said he wants to focus on general conditions 3 and 4, which state "that the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity" and "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." He said the additional traffic on narrow streets and the residential nature of the area will prevent the project from meeting these general conditions.

Thomas Erdman, who lives in Oceana, said he has a floating structure in front of his home and claimed the marina destroyed a wall on his property while he was out of town. He said he is against the location of the dumpster and believes there is nothing in the proposal that benefits the community. Mr. Erdman said it will adversely affect the value of Oceana property and is not in harmony with the community. He said he does not know how the plan can be approved if one of the parking spots is in his backyard.

Kerry Machovec of 309 Georgia Avenue said the marina's dumpster is only 30-35 feet from her deck, and she is worried about odor from the receptacle once a restaurant is operating on the site. She said she is concerned about the value of her property and quality of life. Ms. Machovec said there are

traffic issues and cars parked along Georgia Avenue, which became worse when Freedom Boat Club began operating. She said the marina and Freedom Boat Club are trying to operate beyond their means and do not have enough space, so the community should not have to suffer.

Chairman Rouse asked if the applicant wanted to rebut any evidence presented.

Mr. Richardson said there is no traffic impact analysis required by this application, and no one who spoke is a traffic engineer. He said the applicant is entitled to put the dumpster where it's being proposed because there is nothing in Town code that says otherwise. Mr. Richardson said this is not the stage for CAMA to be involved in the project, and he contends that there are surveys and chains of title showing the wall Mr. Erdman spoke about was on the marina's land. He said everybody who spoke bought their property with the marina operating adjacent to them.

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

Motion made by Chairman Rouse, seconded by Vice Chairman Hogan

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

*Motion passed unanimously*

Commissioner Carew asked if the cars pictured parked along the roadway are legally parked. Mr. Hardison said they are not because Town parking regulations prohibit anyone from blocking an access lane or having tires on the pavement. He said cars are allowed to park on the side of the road but cannot encroach on any private property or pavement and should be on the shoulder of the road in the grassy area. Mr. Hardison said Parking Enforcement has issued tickets for vehicles that were hovering over the drive lane.

Commissioner Carew asked if employees for Freedom Boat Club should factor into the number of required parking spaces. Mr. Hardison said the count is for the marina itself, and the Town hasn't historically considered any employees that may be leasing the space, such as charter fishermen.

Vice Chairman Hogan said he doesn't understand why Freedom Boat Club employees are not factored into this application.

Commissioner Boswell said she plans to deny the application because the use does not meet all required conditions and specifications.

Commissioner Conto said there is documented evidence from the Town in the agenda packet referring to an increase in the traffic pattern. She said any large truck would negatively impact the Machovecs' ability to have anyone in the exterior part of their driveway, and it would be difficult for them to exit their property.

Commissioner Crouch said he would oppose this request because he feels it does not comply with the general conditions and standards of the ordinances.

Commissioner Piper said some of the parking spaces are tight, and he doesn't think he can approve the application because there are too many unknowns.

Vice Chairman Hogan asked if the parking requirement of one space per two employees is Town-wide. Mr. Hardison said this is in the Town code specific to Commercial Marinas, and employee parking is not a requirement for all uses.

Chairman Rouse said he expects issues such as this to come up again because of different zoning districts being located adjacent to each other, which causes disagreements about rights. He said he is inclined to follow staff's recommendation for this application.

**ACTION:** Motion where denial should be directly related to one or more of the following findings. Reasons for denial must be specifically stated by Town Council or Planning and Zoning:

1. That the use will materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved by issuance of the CUP (Conditional Use Permit);
2. That the use does not meet all required conditions and specifications;
3. That the use will substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and
4. That the location and character of the use if developed according to the plan as submitted and approved will not be in harmony with the area in which it is located and in general conformity with the town Land Use Plan and policies

Motion made by Vice Chairman Hogan

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

*Motion passed unanimously*

## **NON-AGENDA ITEMS**

Mr. Hardison reminded Commissioners that the December Unified Development Ordinance (UDO) meeting is canceled. The next meeting will be on January 17 at 4:00 PM.

## **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 Piper, Commissioner Carew, Commissioner Conto

*Motion passed unanimously*

Chairman Rouse adjourned the meeting at 8:20 PM.