



RECEIVED
NOV 17 2023
Hayden

Application for Appeal
TOWN OF CAROLINA BEACH, N.C.

Permit Number: CB A02

Each application must be printed or typewritten and have all information answered. It is strongly recommended that the applicant set up a meeting with Planning Staff prior to the submission deadline to ensure the application is complete. The Town of Carolina Beach requires a licensed attorney to appear in a representative capacity to advocate the legal position of another person, firm, or corporation who is the applicant/owner of record.

Fee: \$450.00 to be submitted with application

This petition will be scheduled for the next possible regular Board of Adjustment meeting. The applicant or a representative should be present at the meeting to answer any questions the Board may have. Board of Adjustment meetings are held on the second (3rd) Monday of each month at 6:00 P.M. in the Council Room at the Municipal Administration Building, 1121 N. Lake Park Boulevard, Carolina Beach, NC 28428. Applicants will be informed of any changes in date, time, or location of meetings. Applications and supplementary time for processing and postings are required by the General Statutes of North Carolina.

Applicant Name: Oceana Owners Association, Inc.

Applicant Mailing Address:
440 Oceana Way Carolina Bch NC 28428
Street Address City State Zip

Applicant Phone Number: mobile/work/home (circle one): 704-572-2666
mobile/work/home (circle one): _____

Applicant Email Address: DlntFurr@yahoo.com

Property Owner Name: CBYC, LLC

Property Owner Mailing Address:
401 Marina St Carolina Bch NC 28428
Street Address City State Zip

Section(s) of ordinance being appealed: Article XIV Sec. 40-425 Sec 40-426

1. Jeremy determination 7/8/19
 2. Jeremy determination undated
 3. Jeremy determination undated
 4. Board of Adjs determination 1/3/20
 5. consent order 12/21/20
 6. parking lot drawings
7. Google earth pics
- SEE ATTACHMENTS
-

Please give a brief description of the interpretation:

Article XIV Sec 40-425 Jeremy Hardison's interpretation is
completely wrong and is 180° from his determination on this same
situation when he testified under oath on 1/14/20 during the Quasi-Judicial
hearing for the CUP for CBYC. It is illegal to make a nonconforming
situation more nonconforming than when it became nonconforming.

Applicant Signature:

Oceana Owners Association, Inc by Olin Furr - Pres.

Date: 11 / 17 / 23

Applicant Printed Name:

Oceana Owners Association, Inc by Olin Furr - Pres

Joe Benson
Mayor

Steve Shuttleworth
Council Member

LeAnn Pierce
Council Member



Tom Bridges
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

July 8, 2019

Jimmy Sanderford
418 Marina St
Carolina Beach, NC 28428

Cc: Sam Potter

RE: Complaint received 12/14/2018

Dear Mr. Sanderford,

Per section 40-264 of the Town of Carolina Beach Code of Ordinances, I am providing notice of my final determination the violations alleged in your Complaint filed December 14, 2018. The Complaint alleges that Carolina Beach Yacht Club and Marina is not adhering to a conditional use permit and is creating a public safety issue. More specifically, the violation is described as follows:

"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 POV parking only. Furthermore, business parking in a residential area zoned parking lot is not a permitted use. The parking spaces were never constructed according to the approved plans and encroach onto Oceana HOA property. Some spaces, if used, becomes a public safety issue for through traffic. Attached are pictures showing property lines and current parking use".

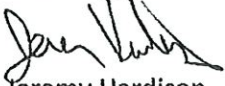
The Conditional Use Permit referenced in the Complaint was issued on November 15, 2005 and allowed for redevelopment of the existing Oceana Marina. The project authorized demolition of the existing structures and construction of a four story structure consisting of residential condominiums, retail units, fitness center, restaurant and offices. However, the project never started construction and the Conditional Use Permit expired on November 15th, 2007. Therefore, to the extent your Complaint references the expired Conditional Use Permit, no alleged violation of those conditions exist.

Staff cannot enforce conditions that pertain to a specific permit that has now expired.

Further, and as we have discussed, the parking located inside the gated Oceana Subdivision is a private parking lot which is owned and operated by the Carolina Beach Yacht Club & Marina. The parking lot has a private access easement to get to the marina in Oceana Subdivision. As both the road and parking areas are private property, the Town has no ability to intervene in the dispute as those matters would be a civil matter.

If you have any questions regarding this matter, please contact me at (910) 458-2991.

Sincerely,



Jeremy Hardison
Planning & Development Director

No mention of nonconforming situation!
He has no idea that he is confused
and lost. He says it is a private
matter!

Cc: Sam Potter

Joe Benson
Mayor

Steve Shuttleworth
Council Member

LeAnn Pierce
Council Member



Tom Bridges
Mayor Pro Tem

JoDan Garza
Council Member

Ed H. Parvin
Interim Town Manager

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Sam Potter
Hodges Coxe & Potter, LLP
3907-100 Wrightsville Avenue Wilmington, NC 28403

Dear Mr. Potter,

I am in receipt of your email to Noel Fox, Town Attorney, dated July 12, 2019. **The purpose of this letter is to provide my final determination on the following issue: whether a parking lot used solely to support a property zoned Marina Business, but located in a residentially zoned district, is a permitted use.** As described below, the Town's position is that the use of the parking lot is allowed.

This 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.

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 of the New Hanover County Register of Deeds. The plat designates the parking area at issue as "reserved for parking by Oceana Limited Partnership" who owned the Carolina Beach Yacht Club & Marina at that time. The parking lot in questioned was approved by the town as a designated parking area that included an easement to access the Marina.

The Town's previous approval of the parking lot being reserved for the Oceana Limited Partnership remains in effect today.

If you have any questions regarding this matter, please contact me at (910) 458-2991.

Sincerely,


Jeremy Hardison
Planning & Development Director

Jeremy still doesn't get it! Mr. Potter wants a code OR zoning determination by ordinance. He still doesn't give a zoning determination, only his opinion. Oh I guess it is grandfathered in. At this time it was an illegal nonconforming situation, because by ordinance to be legal it must have an SUP to make it nonconforming legal.

Lynn Barbee
Mayor

Joe Benson
Council Member

Deb LeCompte
Council Member



Jay Healy
Mayor Pro Tem

Mike Hoffer
Council Member

Bruce Oakley
Town Manager

Town of Carolina Beach
1121 N. Lake Park Blvd.
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Olin Furr
440 Oceana Way
Carolina Beach NC 28428

AS OF 1/3/20 Parking lot is nonconforming situation. Jeremy is playing with words. Illegal to make it larger.

Dear Mr. Furr,

I am in receipt of your violation complaint dated October 6, 2023. As I understand your complaint, you do not think that the number of spaces in a non-conforming parking lot facility can be increased. The purpose of this letter is to provide my determination on whether a non-conforming parking lot facility can increase the number of parking spaces.

Your complaint is in reference to the non-conforming parking lot with the address of 401 Marina St (PIN 3131-74-1321.000), located within the Oceana neighborhood. The operator of the Carolina Beach Yacht Club Marina relocated three parking spaces to the referenced parking lot above. Two of the parking spaces were originally located within the parking lot facility and moved within the same facility due to the location of a transformer. Another space was moved from the Marina building parking lot due to an encroachment of a wall from an adjacent property. This increased the total number of spaces from 56 to 57 parking spaces in the non-conforming parking lot.

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 my determination that the non-conforming parking lot at issue is allowed to increase the number of parking spaces. If you believe my determination is in error and would like to appeal it, please find the attached appeal form. Below is the ordinance language for reference.

ARTICLE XIV. - NONCONFORMING SITUATIONS

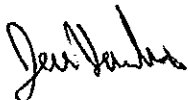
Sec. 40-425. Extension or enlargement of nonconforming situations, including land uses and buildings.

- (a) *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.
- (b) *Nonconformity may extend throughout a completed building.* Subject to subsection (e) of this section, a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this article, was manifestly designed or arranged to accommodate such use. A nonconforming use may not be extended to additional buildings or to land outside the original building.

- (c) *Physical alteration or addition of new structures.* Physical alteration of structures or the placement of new structures on open land are unlawful if they result in:
- (1) An increase in the total amount of space devoted to a nonconforming use;
 - (2) Greater nonconformity with respect to dimensional restrictions such as yard requirements, height limitations; or
 - (3) The enclosure of previously unenclosed areas, even though those areas were previously used in connection with the nonconforming activity. An area is unenclosed unless at least 75 percent of the perimeter of the area is marked by a permanently constructed wall or fence.
- (d) *Nonconformity may not be increased to cover more land.* A nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming.
- (e) *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 and in no violations of other subsections.
- (f) *Repairs and maintenance are encouraged.* Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted and encouraged.

Please be advised that any appeal of my determination must be filed by 11/19/23.

Sincerely,



Jeremy Hardison

Planning & Development Director

LeAnn Pierce
Mayor

Steve Shuttleworth
Council Member

Lynn Barbee
Council Member



Jay Healy
Mayor Pro Tem

JoDan Garza
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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.

Zoning
by Jeremy

It WAS
an illegal
NON CONFORMITY

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 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

 1/3/20
Secretary to the Board

Date Order Filed with Planning Office: JANUARY 3, 2020

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

We did not appeal to Superior Court because the statute of limitations ran out. So we accept it as a nonconforming situation. But I did notice that you did not include important points made by Mr. Potter. Mr. Potter explained how it was an illegal nonconforming situation because a SUP was never applied for OR issued. Very important. It is now as of this date legal non forming.

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

20-CVS-1444

COUNTY OF NEW HANOVER

IN RE REQUEST BY CBYC, LLC,)

Petitioner,)

v.)

TOWN OF CAROLINA BEACH, a North)
Carolina Municipal Corporation and)
Body Politic,)

Respondent,)

OCEANA OWNERS ASSOCIATION,)
INC.)

Intervenor-Respondent.)

CONSENT ORDER

THIS MATTER appears before the Court for entry of a Consent Order granting the application and request for a conditional use permit submitted to the Respondent Town of Carolina Beach ("Town") by Petitioner CBYC, LLC ("CBYC") (collectively, "Consent Order").

ALL PARTIES, including Intervenor Oceana Owners Association, Inc. ("Oceana"), now consent, by and through their undersigned counsel, to the granting of this Consent Order and CBYC's application and request for a conditional use permit that was submitted to the Respondent on or about 25 September 2019, premised upon the following:

FINDINGS OF FACT

1. Jurisdiction and venue of this action are properly before this Court.
2. By virtue of that General Warranty deed dated 31 July 2019 and recorded on 2 August 2019 in Book 6235 at Page 2175 of the New Hanover Country Registry of Deeds

A TRUE COPY
CLERK OF SUPERIOR COURT
NEW HANOVER COUNTY
BY: *Leni M. Knowles*
Deputy Clerk

("Registry"), CBYC owns the real property located at 401 Marina Street in New Hanover County, North Carolina ("Property").

3. On or about 25 September 2019, CBYC applied to the Town for a conditional use permit (hereinafter "Permit") for certain limited improvements to its Property.

4. CBYC's Property consists of an existing commercial marina including fuel docks, a ship store, an office, residential unit, parking, and related facilities which have been in place for more than 20 continuous years preceding CBYC's Permit application (collectively, "Marina").

5. CBYC's Permit application seeks to (i) extend and widen its existing fuel dock; (ii) add and relocate its fuel pumps; (iii) place a barge adjacent to CBYC's existing dock, where the existing office and ship store will be relocated; (iv) add thirteen (13) parking spaces, a designated loading zone, and two (2) ADA compliant parking spaces within the Property's existing boundary; and, (v) add an outdoor eating establishment to serve hot food and drinks to the Marina's patrons.

6. The 2007 Town of Carolina Beach CAMA Land Use Plan sets forth the Town's desire to encourage "low intensity water-oriented restaurant or other low intensity water-oriented commercial services with public docking and water access."

7. The Town's existing Code of Ordinances permits restaurants, bars, eateries, retail sales, office space, and other marina related uses in the MB-1 zoning district in which CBYC's Property is located.

8. The Town's Ordinances require an applicant for a conditional use permit to meet seven (7) specific and four (4) general standards before being approved. *Carolina Beach, N.C. Code of Ordinances*, § 40-327(c) and (d).

9. The Town's Ordinances also set forth standards for particular uses such as eating and/or drinking establishments, which are specifically permissive uses within the Property's MB-1 zoning district. *Id.* § 40-261.

10. On 14 January 2020, a quasi-judicial hearing was held on CBYC's application for its Permit.

11. At the hearing, CBYC and Oceana presented evidence concerning the seven (7) specific and four (4) general standards before being approved. *Carolina Beach, N.C. Code of Ordinances*, § 40-327(c) and (d).

12. On 30 March 2020, the Town issued its written Order denying CBYC's Permit application based on the 2-2 tied vote of the Town's Council's vote.

13. On 29 April 2020, CBYC timely and properly filed its Petition for Writ of Certiorari to this Court seeking to appeal the Town's Order denying its Permit application.

14. On 29 April 2020, CBYC's Petition for Writ of Certiorari was granted; the Town submitted the record for the appeal; and this Court was scheduled to conduct the appellate hearing on CBYC's appeal on 23 September 2020.

15. On 29 May 2020, Oceana filed its Verified Motion to Intervene of Oceana Owners Association, Inc., and its proposed Response of Intervenor-Respondent Oceana Owners Association, Inc (collectively, "Intervention Motion").

16. On September 15, 2020, Oceana filed an Objection to Notice of Hearing and Motion to Continue the noticed appeal hearing. Thereafter, counsel for CBYC informed counsel for Oceana that CBYC would consent to Oceana's Intervention Motion to keep the noticed date for the appeal hearing.

17. Ultimately, the hearing on CBYC's appeal was canceled based upon the parties' agreement and resolution of the matters between them.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the parties and this Court agree to the following Conclusions of Law:

1. This Court has jurisdiction over the parties and the subject matter of this proceeding.

2. Oceana's Intervention Motion is hereby granted, thus binding Oceana to the rights and obligations of this Consent Order.

3. Conditional use permits are issued for uses that an ordinance expressly permits in a designated zone. *Humble Oil & Refining Co. v. Bd. of Aldermen*, 284 N.C. 458, 467, 202 S.E.2d 129, 136 (1974).

4. To effectuate the parties' settlement and the entry of this Consent Order, the parties agree that CBYC produced competent, material, and substantial evidence establishing that CBYC's Permit application met all relevant standards, specifications, and requirements set forth under the Town's Ordinances for issuance of a conditional use permit.

Based upon the foregoing, including the consent and request of the parties, and upon a review of the terms herein, the Court believes that the entry of this Consent Order is fair, in the interests of justice, and should be entered.


NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

1. CBYC's application for a Permit shall be and the same is hereby GRANTED upon the following conditions/restrictions:

- a. All of the terms and provisions contained in CBYC's Permit Application, except as may be expressly modified hereinbelow and said modifications shall supplement and amend CBYC's Permit Application.
 - b. CBYC shall fully comply with all Town, New Hanover County, State, and/or Federal rules and regulations, including the departments and agencies of each such entity.
 - c. CBYC shall not play music, whether recorded or live, before 12:00 p.m. each day, will stop playing any such music one (1) hour before closing time each day, and will at all times comply with the Town's noise ordinance.
 - d. CBYC's store, restaurant, fueling and other sales and activities shall cease by 9:00 p.m. beginning on the Friday of Memorial Day weekend of each calendar year through and including the Labor Day holiday of each calendar year. At all other times (i.e., the off-season), said activities shall cease by 7:00 p.m.
 - e. CBYC's restaurant operations will open on a daily basis no earlier than 7 a.m.
 - f. Any newly installed lighting within CBYC's Marina shall be directed downward and away from the residential homes in the Oceana Subdivision.
 - g. CBYC will ensure that trash is picked-up on a daily basis within all areas of its operation, including along its walkways along the Marina and also within the parking lot and spaces owned by CBYC within the Oceana Subdivision.
 - h. Any future conditional or special use permit application by CBYC requesting additional uses of the Property not contemplated in the current Permit may be contested by Oceana notwithstanding this Consent Order. Alternatively, Oceana may choose to require the same restrictions specified herein to be imposed on the use proposed by any such future conditional or special use permit application.
2. Nothing herein shall be construed so as to waive, limit or otherwise prejudice CBYC and its successors and assigns from seeking additional uses and/or improvements to its subject property and marina as may be allowed by the Town's ordinances. Nothing herein shall be construed so as to waive, limit or otherwise prejudice the legal and/or factual arguments of any opponents possessing legal standing to any future applications by CBYC and/or its successors and assigns to make any additional uses and/or improvements to its subject property.

3. The terms and provisions of this Order shall be fully enforceable by the Court with all of its authority including, without limitation, the Court's powers of contempt, including an award of attorney's fees for any prevailing party.
4. Each party shall bear its own respective costs and attorneys' fees, except in any proceedings under Paragraph 3.
5. The provisions of this Consent Order shall be binding upon and inure to the benefit of the parties' respective successors and assigns.

So ORDERED this the 21st day of December 2020.



THE HONORABLE George F. Jones
Resident Superior Court Judge Presiding
New Hanover County, North Carolina

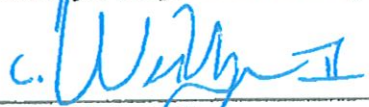
WE CONSENT:



G. Grady Richardson, Jr.
Counsel for Petitioner, CBYC, LLC



Charlotte Noel Fox
Counsel for Respondent Town of Carolina Beach



C. Wes Hodges, II
Counsel for Intervenor-Respondent,
Oceana Owners Association, Inc.

Blown up area
of Parking Design
Allowed

EX. PARKING SPACES
ARE 9'X18' PER TH
TYPICAL PARKING
SPACE

EX. PARKING SPACES

16 EX. PARKING SPACES

EXTEND PARKING SPACES
TO 18' OUTSIDE OF
EASEMENT.

EX. PARKING SPACES

5 EX. PS

4 EX. PS

3 EX. PS

SPINNAKER F
UOA INC
ZONING R-1B (RES)

EXTEND PARKIN
TO 18' OUTS
EASEMENT

9 EX. PARKING SPACES

KILM INVESTMEN
ZONING R-1B (RES)

WAYNE BAREFOOT
ZONING R-1B
(RESIDENTIAL)

WAYNE BAREFOOT
ZONING R-1B
(RESIDENTIAL)

RICKY & BETTY
YOUNG
ZONING R-1B
(RESIDENTIAL)

MILEWSKI
PROPERTIES LLC
ZONING R-1B
(RESIDENTIAL)

ACCESS EASEMENT
MARINA

41'4" E
34.06'
34

309'
309'

CATHY
R-18
(RESIDENTIAL)

Agenda Item - Consider a Conditional Use Permit at 401 Marin...

Hoan

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9/2/21
NO CHANGE!
Sec. 16-153 Designated Parking



12/31/2001

