

# CAROLINA BEACH

Planning and Zoning Meeting

Thursday, April 08, 2021 - 6:30 PM

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



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## MINUTES

### CALL TO ORDER

Chairman LeCompte called the meeting to order at 6:30 PM.

### PRESENT

Chairman Deb LeCompte

Vice Chairman Wayne Rouse

Commissioner Melanie Boswell

Commissioner John Ittu

Commissioner Ethan Crouch

### ABSENT

Commissioner Jeff Hogan

Commissioner Todd Piper

### ALSO PRESENT

Planning Director Jeremy Hardison

Senior Planner Miles Murphy

### APPROVAL OF MINUTES

1. Approval of the Minutes from March 11<sup>th</sup>, 2021

**ACTION:** Motion to approve the minutes as written

Motion made by Vice Chairman Rouse, Seconded by Commissioner Ittu

Voting Yea: Chairman LeCompte, Vice Chairman Rouse, Commissioner Boswell, Commissioner Ittu, Commissioner Crouch

*Motion passed 5-0*

### STAFF REPORT ON RECENT DEVELOPMENTS

Town Council and Other Updates

- 160D Final Draft – P&Z May
- Beach services and vending permits have been issued
- Sidewalk café permit applications are being distributed

Mr. Murphy reported the following statistics for the past month:

Permitting

- 48 permits (renovation, repair, grading, additions, fence)
- 13 residential new construction
- 7 certificates of occupancy
- 282 building permits received in 2021
- Over 300 total permits in 2021

#### Code Enforcement

- 7 complaints received
- 2 resolved

#### Demos in Progress

- 210 Cape Fear Boulevard
- 3 Boardwalk
- 1310 Snapper Lane
- 301 Charlotte Avenue
- 1213 Canal Drive
- 206 Carolina Beach Avenue South
- 1616 Mackerel Lane
- 206 Texas Avenue

#### New Businesses

- Far Out on the Boardwalk – 8 Pavilion Avenue South #7
- Carolina Surf Brand (Relocation) – 11 Pavilion Avenue South #1
- Crabby Cliff's – 1010 South Lake Park Boulevard
- Mermaid Crest – 209 Raleigh Avenue (former Cole's Motel; under new ownership)

#### Coming Up

- Text amendment: Chapter 160D – May/June
- Text amendment: table of permissible uses
- Text amendment: road improvements
- Text amendment: parking lots

Vice Chairman Rouse asked about the status of 208 Cape Fear Boulevard. Mr. Murphy said it's been a long, complicated process. He said the owner had a unique idea that didn't quite meet zoning, and then there was a saga with a gigantic fortification fence, potentially merging the structures into one, and adding a pool. Mr. Murphy said as of now, the plan is to tear down all of the structures on the lots and come back with individual structures or combine them and come back with one structure.

#### **PUBLIC DISCUSSION**

None

#### **DISCUSSION ITEMS**

2. Text Amendment: Consider amending Chapter 40, Article VII, Fence Regulations to review restrictions and how to measure height.

The Commission requested that staff review fence regulations, particularly related to how height is measured. Staff took Commission feedback to the Technical Review Committee (TRC) and discussed various fencing ordinance changes. These changes were compiled into several updates related to how fences are controlled and inspected. Proposed changes include measuring the height of the fence from the adjacent grade along the interior of the fence and extending the allowance of the permitted area of 6-foot fences. The proposed ordinance incorporates both Commission and TRC recommendations.

Planner Gloria Abbotts presented the details. She said the proposed changes regarding height and the front yard setback include a proposed regulation that states no fence shall exceed 4 feet in height when located within 10 feet of the front property line. The existing regulation states that no fence shall exceed 4 feet in height when located in the front yard setback.

Proposed changes also call for the fence to be measured from the inside instead of the outside of the adjacent abutting property. In addition, under the proposed new regulations the retaining wall would no longer be part of the overall fence height. Ms. Abbotts said staff also mentioned the Commission's desire to change the maximum fence height from 6 feet to 7 feet, but TRC was not ready to move forward on that because fences over 6 feet in height must be engineered and require a building permit.

Commissioner Boswell asked who requires a fence over 6 feet to be engineered. Ms. Abbotts said as of now fences only include a zoning permit, but exceeding that would require a building permit. Mr. Hardison said this is required by the State.

Commissioner Boswell said she had more of an issue with the retaining wall not being a part of the overall fence height and thought this could turn into a huge problem with up to 11-foot structures going up. She said this is the opposite of what the Commission wanted to accomplish and that she wouldn't support that portion of the proposed changes.

Commissioner Crouch said the proposed change to how height is measured addresses a lot of his initial concerns, and he is in favor of that. He said it might be worth keeping the following verbiage that under the proposed changes would be omitted: "Any retaining wall or berm below the fence shall be considered as part of the overall height of the fence. Bulkheads that are adjacent to estuarine waters are exempt from this regulation."

Commissioner Ittu said he agreed that the verbiage above should remain in the ordinance. He mentioned an example of what he called a "monstrosity" on Lake Park Boulevard that includes a 4-foot retaining wall with a 6-foot fence on top.

Chairman LeCompte said she also agreed with keeping the verbiage because she doesn't think we need fortresses on the island.

Mr. Murphy said the Commission can move forward with parts of the ordinance now or give feedback to consider it as a whole again at a later date.

Commissioner Boswell said she feels rushed and would like to wait until they can come up with a solution to get the overall fence height to 7 feet. She reiterated that her main concern is the retaining wall. She said she's not comfortable with things as they stand now and would like the Commission to have more understanding of the matter.

Commissioner Crouch asked the Commission if they had any concerns about the front yard setback issue. Vice Chairman Rouse said the proposed changes would bring a lot of fences into compliance, and he sees nothing wrong with it. Commissioner Crouch said the main issues with the proposed ordinance changes seem to be the overall height and retaining wall issues.

Mr. Murphy said Commissioners could move forward with the proposed changes they favor and wait until later for staff to further address cumulative height and retaining walls, or they could scratch the whole proposed ordinance and ask staff to come back later with one full piece.

Chairman LeCompte said her vote would be to wait and make all ordinance changes at once.

Commissioner Crouch said he was sensitive to the staff burden that could result from changing the overall fence height maximum from 6 feet to 7 feet. He asked if there was a way to factor in additional fees to help offset this.

Mr. Murphy said staff's concern is that a lot of fences are constructed without permits, and if this trend continues and the height maximum is raised then those fences will not only be non-compliant to zoning code but also non-complaint to State building code, which is a whole different animal.

Commissioner Crouch said he recognizes staff's concerns and could be fine with leaving the maximum height at 6 feet.

**ACTION:** Motion to table this agenda item until staff gets a chance to circle back to the Commission  
Motion made by Vice Chairman Rouse

Voting Yea: Chairman LeCompte, Vice Chairman Rouse, Commissioner Boswell, Commissioner Ittu,  
Commissioner Crouch

*Motion passed 5-0*

3. Text Amendment: Consider amending Chapter 40, Article III, Article VII, & Article XVIII to review setbacks for through lots for fences, swimming pools and accessory structures.

The Town has approximately 70 through lots. Currently, the ordinance requires that accessory structures, swimming pools, and fences meet front setback requirements on both frontages on through lots. Per last month's Commission discussion, staff took Commission feedback to TRC and discussed various ordinance allowances related to through lots. These changes were compiled into several updates related to dimensional standards and setbacks for fences, swimming pools, and accessory structures on through lots. Proposed changes include allowances for the designated rear yards on through lots. In the designated rear yard, fences may not exceed 6 feet, accessory structures must be setback 10 feet, in-ground pools must be setback 5 feet, and above-ground pools must be setback 10 feet. The proposed ordinance incorporates both Commission and TRC recommendations.

Ms. Abbotts presented the details. She said the proposed ordinance defines rear yard as the area between the side lot lines across the rear of the lot. Through lots have no rear yard, only front and side yards.

Regarding fences, staff gave three options:

- Option 1 would eliminate the front setback requirement; no fence shall exceed 4 feet when located within 10 feet of a front property line.
- Option 2 would adjust the front setback requirement; no fence shall exceed 4 feet when located within 5 feet of the front property line in the designated rear yard.
- Option 3 would state that on through lots, in the designated rear yard, no fence may exceed 6 feet as long as there is no driveway access and no sight-distance interference.

Vice Chairman Rouse said the proposed changes would affect more properties than he thought, including himself. He said there would be pushback because it would create non-conforming fences. He suggested he might have to recuse himself but said there is no way he would support this.

Commissioner Crouch said the proposed changes don't have anything to do with defining what a double-frontage lot is and therefore should not be cause for concern in that regard.

Vice Chairman Rouse said his understanding is that the proposed changes clarify what a double-frontage lot is even more than before.

Mr. Murphy further explained the three options presented regarding double-frontage lots. He said one requires a property owner to give up 10 feet, one requires a property owner to give up 5 feet, and one states a property owner can have a 6-foot fence if there is no driveway access and no sight-distance interference.

Vice Chairman Rouse said he would be in favor of option 3.

Mr. Murphy said currently every fence that is 6 feet in the rear yard of a double-frontage lot is non-compliant, is not to code and would not be allowed to be rebuilt today if it was torn down. He said that would be remedied under option 3 and that this only affects properties that have what is considered two front yards because the property goes through an entire block.

Commissioner Ittu said he is in favor of option 3.

Mr. Murphy clarified that the Commission would be voting on the definition of a rear yard, that on double-frontage lots accessory structures must be setback 10 feet instead of 20 feet, and approving that in-ground pools have a 5-foot setback instead of 20 feet and above-ground pools 10 feet instead of 20 feet.

Commissioner Crouch asked how staff is measuring the edge of a pool. Mr. Murphy said this is measured from the edge of the water and that is the way staff has always enforced that regulation.

**ACTION:** Motion that 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 ordinance amendment to Chapter 40 Article III Section 40-75: Dimensional Standards for Accessory Structures, Article VII Section 40-204: Height Restrictions Option 3, Article XVIII Definitions is consistent with the goals and objectives of the adopted Land Use Plan and other long-range plans

Motion made by Vice Chairman Rouse, Seconded by Commissioner Boswell

Voting Yea: Chairman LeCompte, Vice Chairman Rouse, Commissioner Boswell, Commissioner Ittu, Commissioner Crouch

*Motion passed 5-0*

4. Text Amendment: Consider amending Chapter 40, Article III & Article IX, to address Private Parking Lots that Charge for Parking  
Applicant: Town of Carolina Beach

Council requested that staff review the allowances for permanent and temporary commercial parking lots. In 2007, an allowance was created to allow for private lots to charge for parking in the Central Business District (CBD). The allowance was created with the downturn in the economy to allow vacant lot property owners to make use of properties that were in transition.

The Town currently has 5 parking lots in the CBD that are Town-owned; 3 privately owned lots have agreements with the Town to manage parking in the district; there are 5 private temporary parking lots that are potentially looking to charge for parking this coming summer in the CBD. Permits for private parking lots are issued annually. If a permit is issued prior to the ordinance change, then they would still be able to operate this summer. Temporary private parking lots can charge for parking from Memorial Day weekend to Labor Day. Private lots can charge all year long if they are approved as permanent parking lots, but they are required to do more upgrades to handle stormwater and provide landscaping. The Town has not issued any permits for a permanent parking lots since the allowance was created in 2007.

Concerns about commercial parking lots' operating practices have caused the review of this ordinance. Private parking lots are known to be more aggressive with their enforcement practices (towing, booting, fines, etc.), require handicapped people to pay for any space, not honor Town decals, and not provide golf cart parking. In addition, fees are not controlled by the Town, and private lots occasionally improperly manage trash. There is also confusion with the public about which lots are Town or private entities.

Staff has provided three options for the Commission to review:

1. Eliminate the allowance for private parking lots to charge for parking. The property owners could still benefit from utilizing their property for parking. An option would be to have an agreement with the Town. This would create unified parking standards and regulations for all parking lots managed by one entity.
2. Allow existing commercial businesses in the CBD to charge for parking when the business is closed.
3. No change and continue to allow private parking lots to charge in the CBD.

Mr. Hardison presented the details. He went over the differences between what is required of both temporary and permanent parking lots. The main difference is that permanent lots require additional landscaping standards as well as environmental and stormwater upgrades.

Mr. Hardison said the Town considered whether it would be creating a monopoly by prohibiting private parking lots. He said Town Attorney Noel Fox had legal concerns about this, so the option before the Commission now is to eliminate temporary lots and require the private lots to do the necessary upgrades to become permanent, which could be handled through a one-time permit instead of annual.

Vice Chairman Rouse asked what stormwater engineering would cost. Commissioner Crouch said it could be \$200 to \$10,000 depending on the size of the lot.

Mr. Hardison said there will not be any changes this year, and the idea was to give the private lot owners time to plan ahead if there were going to be any changes.

Chairman LeCompte said private lots, whether temporary or permanent, should be able to charge for parking during the same time frame that Town lots can charge, even though temporary lots are now limited to charging only from Memorial Day weekend to Labor Day.

Commissioner Boswell asked if the Town has discussed this with the lot owners. Mr. Hardison said he hasn't. Mr. Murphy said there have been informal discussions about alternative uses for some of the parcels, but time frames have not been established. He said there is desire to develop, but nothing official has happened at this point.

Vice Chairman Rouse asked why the Town wants to change anything regarding parking on private lots. Mr. Hardison said one reason is to eliminate confusion over whether something is a Town or private lot. Mr. Murphy said right now the Town doesn't have a lot of control or enforcement as to the quality of design, how the lots are maintained, and how they are organized.

Commissioner LeCompte said she thinks there should be a set of standards regarding ingress and egress, trash cans, and signage, whether a private lot is temporary or permanent. She said private property owners should be able to charge year-round if they choose.

Vice Chairman Rouse said eliminating the temporary designation and requiring private lots to be permanent would change all the standards that Chairman LeCompte would like to see addressed.

Chairman LeCompte said she also thought removing the temporary designation would be the best solution.

Commissioner Ittu said he would also be in favor of eliminating the temporary status for private parking lots. He said although there would be more requirements for the property owners to have permanent parking lots, they would gain the ability to expand their revenue season to recoup those costs. He said this would also make it more standardized.

Commissioner Boswell said the benefit would be that in return for the changes, a permanent parking

lot could make a bigger profit by charging year-round.

Commissioner Crouch said he agreed with everyone but thought requiring the lots to become permanent could have the unintended consequence of encouraging those property owners to develop their lots instead of putting money into them to continue as parking lots.

Vice Chairman Rouse said he thinks most of them would rather develop anyway but are just waiting for the right opportunity.

Commissioner Boswell said she struggles with the matter because there is a parking issue in the Town and she doesn't want to see big parking garages go up, so while the Commission might have good intentions about making the change for private lots, the potential of losing those lots must be considered. She said the area that the new requirements will take away from actual parking spaces might not make it worth it for the owners to continue to use their land as parking lots.

Vice Chairman Rouse said he agrees that one type of permit is a good idea, but he's not sure about making property owners pay for stormwater engineering if the parking lot is not paved. He said he is all for the idea unless the stormwater fee is so burdensome that it forces property owners out of the parking business.

Mr. Hardison said the stormwater requirements are not necessarily a fee from the Town, but property owners have to come up with an engineered stormwater design for how they are going to treat drainage on the property.

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

Motion made by Chairman LeCompte, Seconded by Vice Chairman Rouse

Voting Yea: Chairman LeCompte, Vice Chairman Rouse, Commissioner Boswell, Commissioner Ittu, Commissioner Crouch

*Motion passed 5-0*

No one requested to speak.

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

Motion made by Chairman LeCompte

Voting Yea: Chairman LeCompte, Vice Chairman Rouse, Commissioner Boswell, Commissioner Ittu, Commissioner Crouch

*Motion passed 5-0*

**ACTION:** Motion that the Commission, whereas in accordance with the provisions of the North Carolina General Statutes, does hereby find and determine that the adoption to eliminate temporary parking lots to Chapter 40 Section 40-72 and Section 40-261 is consistent with the goals and objectives of the adopted Land Use Plan and other long-range plans

Motion made by Commissioner Boswell, Seconded by Commissioner Ittu

Voting Yea: Chairman LeCompte, Vice Chairman Rouse, Commissioner Boswell, Commissioner Ittu,



Commissioner Crouch  
*Motion passed 5-0*

Mr. Murphy asked if the Commission wanted to emphasize stormwater ordinance requirements for lots with pervious surfaces. The consensus among the Commission was yes.

5. Text Amendment: Consider amending Chapter 40, Article III & Article XVIII, to address rooming houses.  
Applicant: Town of Carolina Beach

The Town's zoning ordinance currently does not address rooming houses, also referred to as boarding houses. There have been recent discussions regarding the point at which a property is operating as a single-family home versus a rooming house. The definition of a single-family home by the zoning ordinance means one or more individuals occupying premises and living as a single non-profit housekeeping unit, provided that a group of five or more persons who are not related by blood or marriage shall not be deemed to constitute a family.

Town staff is proposing to prohibit rooming houses in the table of permissible uses and create a definition for rooming houses. This is the result of complaints that have generated from a house that was offering individual rooms for rent to unrelated individuals. The issues that have resulted in this type of arrangement have been parking, noise, and an increase in police calls with the transient nature of the tenants. The proposed definition would regulate when offering rooms for rent on individual basis when not owner-occupied but does not cast a wide net to have a negative impact on vacation rentals or offering roommate living for residences that are owner-occupied.

Mr. Hardison presented the details. He said the proposed definition of a rooming house is "a dwelling unit not owner occupied where individual sleeping rooms are rented under separate agreements or lease, either written or oral, regardless of whether an owner, agent, or rental manager is in residence." He said the Town does not want to interfere with short-term rental regulations.

Commissioner Ittu asked if the home in question was owner-occupied. Mr. Hardison said no and that a lot of times when the owner is present many of the problems go away.

Commissioner Crouch said the proposed change does a good job of defining and prohibiting rooming houses.

Commissioner Boswell said the proposed change addresses the concerns of the Commission.

Commissioner Crouch asked how grandfathering would be addressed. Mr. Hardison said once a property currently operating as a rooming house discontinues that use, it cannot operate as a rooming house again.

Commissioner Boswell asked if the property in question would be grandfathered. Mr. Hardison said it is for sale and residents have moved out, so it is currently no longer operating as a rooming house.

Vice Chairman Rouse mentioned the idea of incorporating into the ordinance how the lease is written or how payment is made. He said that would likely resolve the issue because people living in what is considered a rooming house wouldn't all pay with one check. He said he's in favor of the proposed change.

Commissioner Ittu said he thinks the proposed change alleviates the situation and doesn't overreach to have unintended consequences in a beach rental market.

**ACTION:** Motion that whereas in accordance with the provisions of the North Carolina General Statutes, the Commission does hereby find and determine that the adoption of the following ordinance amendment to amending Chapter 40 Article III and Article XVIII is consistent with the goals and objectives of the adopted Land Use Plan and other long-range plans

Motion made by Commissioner Ittu, Seconded by Vice Chairman Rouse

Voting Yea: Chairman LeCompte, Vice Chairman Rouse, Commissioner Boswell, Commissioner Ittu, Commissioner Crouch

*Motion passed 5-0*

### **NON-AGENDA ITEMS**

Chairman LeCompte said her end of Charlotte Avenue is now surrounded by short-term rentals. She said she and her neighbors have to call police once every few weeks because of one particular property. She inquired about what the Town can do to address a nuisance property of that nature because she and her neighbors are frustrated.

Mr. Murphy said there are currently no regulations in place for short-term rentals and no plans to enact any for zoning officials to enforce due to limited time and resources. He said the Town could put into place a strong noise ordinance or nuisance-related regulations for Police and Code Enforcement to monitor, but it's not something that would be addressed in the zoning code. He said he welcomed suggestions and could relay input to Town Council.

Mr. Hardison asked Chairman LeCompte if there are existing regulations being violated, such as noise, trash, or parking. Chairman LeCompte said all of the above were problems. Mr. Hardison said those violations could take care of the problem right now.

Chairman LeCompte said although the police have come to her area frequently in recent times, the problems are not constant and largely depend on the types of renters who are there. She said families don't typically cause issues, but some young people do.

### **ADJOURNMENT**

**ACTION:** Motion to adjourn

Motion made by Chairman LeCompte

Voting Yea: Chairman LeCompte, Vice Chairman Rouse, Commissioner Boswell, Commissioner Ittu, Commissioner Crouch

*Motion passed 5-0*

The meeting adjourned at 8:30 PM.