

**MINUTES OF THE SPECIAL MEETING
OF THE TOWN COUNCIL
TOWN OF CAROLINA BEACH**

March 2, 2006

The Town Council of the Town of Carolina Beach met in a special session on March 2, 2006 at 6:30 p.m. in the Council Chambers at the Municipal Administration Building, 1121 N. Lake Park Blvd., Carolina Beach, North Carolina. The following were present: Mayor, Bill Clark; Mayor Pro Tem, Alan Gilbert; Councilwoman, Pat Efird; Councilman, Joel Macon and Councilman, Jerry Johnson. Also present was Interim Town Manager, Robert Nicholl and Town Clerk, Lynn N. Prusa.

Mayor Clark called the meeting to order.

PUBLIC HEARING – CONSIDER AN AMENDMENT TO APPENDIX A ZONING, ARTICLE 18 NON-CONFORMING SITUATIONS

Mayor Clark opened by recognizing the Director of Planning and Development, Steve Harrell, for the purpose of making the presentation this evening. Mr. Harrell turned it over to the town's Senior Planner, Ed Parvin, as he was the one that attended the special meeting when the language was adopted. Mr. Harrell explained that he was out of town at a conference with the Mayor and Councilman Johnson and unable to attend.

Mr. Parvin said that before the staff reviewed this language they looked at the long range plans and the goals for non-conforming and their long range plans didn't really specify what the goals were for non-conforming structures. They came up with goals by looking at the goals of other communities and they came up with the following statement:

The goal of this section is to regulate and limit the continued existence of uses and structures established prior to the effective date of this ordinance (or any amendment subsequent thereto) that do not conform to this ordinance. Any nonconformity created by a change in the classification of property or the text of these regulations shall also be regulated by the provisions of this section. Nonconformities may continue, but the provisions of this section are designed to curtail substantial investment in nonconformities and to bring about eventual elimination and/or lessen their impact upon surrounding conforming uses in order to preserve the integrity of the area in which it is located and the intent of this ordinance.

He said that he presented a similar statement to the Planning and Zoning Commission and he asked them to keep what the goal of this ordinance is in mind when they were reviewing it.

He said they first looked at the problem which is that the current ordinance dealing with non-conforming situations does not give any provisions for multi-family structures to build back at the same density.

He said with the existing ordinance you are required to build back meeting all of the requirements of the Zoning Ordinance if you receive damages over 50%. He said what is happening and the issue behind the problem is the lenders will no longer approve mortgages for nonconforming properties that cannot be repaired and/or reconstructed according to our existing ordinance.

He said they looked at a few alternatives and the first was to maintain the status quo and maintain the town's existing language but it creates a hardship on property owners if their structure is damaged over 50% and they may lose their home. For example if a lot allows 4 units by our current ordinance and 12 are existing; when the building needs repairs over 50% of the tax value it must conform to current density requirements, unless those repairs are from natural causes such as a hurricane. In the scenario of a natural cause resulting in the damages the owner has 180 days to rebuild.

The second scenario was to add a provision to our existing ordinance to allow multi-family development to be rebuilt at the same density. By adding in a provision to allow structures damaged over 50% to be rebuilt at the same density resolves the existing problem homeowners are currently encountering with lenders.

The last was to expand the nonconforming ordinance language to allow residential development to be rebuilt at the same density; create additional allowances for non-residential structures; and increase allowances for buildings damaged over 50% by tax or appraised value.

He said they struck the language that is currently in the ordinance and they came up with the following:

18.4 Reconstruction prohibited.

- (a) Except for signs, any developments in process (or for which a vested right had been established) prior to the effective date of current regulations, non-conforming uses created by a change in regulations may continue to exist, and structures with such nonconforming uses may be reconstructed if demolished or destroyed.

He explained that basically if you have a conditional use permit that has been reviewed, this just says that you have a vested right in your project and you are allowed if for any reason before you pull your building permit there is an ordinance that's passed that makes you non-conforming then you have the right to build back.

He said they also took out any references to fire in the ordinance and that was one of the fire marshal's requests. Also they didn't want arson to be a concern at all so they addressed demolished or destroyed vs specifying hazards or fire - natural disasters vs. fire.

He then went on to describe the next revision, as follows:

- (b) Any building or structure lawfully used for residential or non-residential purposes for which repair or routine maintenance is proposed in an amount less than fifty (50) percent of the current tax or appraised value of the building or structure, regardless of the reason for such repair or maintenance, shall be entitled to do so using the same building footprint and density with which the building or structure was originally constructed, provided the number of living units *or non-residential spaces* are not increased and no additional nonconformities are created. If damage exceeds the above stated fifty (50) percent then current building code and storm water requirements shall also be met.

He explained that they added in the non-residential and if you exceed 50% then you can build at the same density as long as you meet the building code which would be required anyway and you would have to have the storm water taken care of for your site.

He continued on stating the next section:

- (c) Any building or structure requiring Full Reconstruction shall be entitled to do so using the same building density with which the building or structure was originally constructed, provided, 1) the number of living units *or non-residential spaces* are not increased, 2) no additional nonconformities are created, and, 3) the building or structure meets current flood, building code, yard setbacks, and storm water requirements.

He said this just adds on to (b) basically and for reconstruction you can take it down to the foundation and build back as long as you meet the requirements listed under number 3.

He continued:

- (d) Reconstruction of a nonconforming building, structure or use under the provisions of Article 18.4 shall be subject to the following restrictions:
 - 1. A letter of intention to reconstruct is to be delivered to the Building Inspector within six (6) months from the date the building or structure was damaged or destroyed.
 - 2. A building permit is to be obtained from the Building Inspector within two (2) years from the date the building or structure was damaged or destroyed..

He said that previously you had 180 days to build back and this gives you 6 months to give a letter of intent to the inspections department and two years to obtain a building permit.

Under 18.5 Change in Kind of Non-Conforming Use, he said they struck (a) and (b) became (a) and (c) became (b), as follows:

~~(a) — A non-conforming use may only be changed to a conforming use except in the case of a natural disaster where the property owner will be given 180 days to rebuild the same use in the same pre-disaster footprint. Thereafter, the property may not revert to a non-conforming use.~~

(a) A nonconforming use shall not be changed to another nonconforming use.

(b) If a nonconforming use and a conforming use, or any combination of nonconforming uses exist on one lot, the use made of the property may be changed only to a conforming use.— Conforming uses, except adult oriented businesses, may be established or re-established in nonconforming buildings or structures provided that off-street parking is provided as required by this article and provided no other provision of this article for the establishment of new uses is violated.

Under 18.7 Abandonment and Discontinuance of Non-Conforming Situations, he noted only one grammatical change, with the deletion of the word “in”, as follows:

(a) Except as specified ~~in~~ elsewhere when a non-conforming use is discontinued for a consecutive period of one hundred eighty (180) days, the property involved may thereafter be used only for conforming purposes.

He also shared with Council under 23.3 Definitions: Reconstruction, Full, as follows:

Any construction performed on a building or structure that requires complete demolition of the existing building or structure, including any portion of the foundation. The term foundation includes piling systems, masonry foundation walls, and monolithic concrete slabs. If required by a licensed engineer, additional bracing and supports may be added to existing foundations, however for these purposes, removal and/or replacement of any portion of the foundation shall be considered full reconstruction.

Mayor Clark asked if anyone had any questions.

Mayor Pro Tem Gilbert said that he is concerned that this really isn't supporting the goal. He said that you gave us 3 alternatives and one is basically doing nothing and he doesn't feel that we should do that. The other alternative is to add a provision to our existing ordinance to allow multi-family development to be rebuilt at the same density. He asked Mr. Parvin, where is that language and did you give that to Council as an alternative? Mr. Parvin explained that was discussed at Planning and Zoning and he is only presenting the alternative that they are recommending. Mayor Pro Tem Gilbert said he is concerned because this was done in such haste and he doesn't see how this supports the goal and he wonders if it is going over and beyond what we are trying to do. He also cited (a) the wording "... in structures with non-conforming uses may be constructed if demolished". He asked, does this mean that if somebody voluntarily demolishes a non-conforming building you are allowing it to be built back and a non-conforming building? Councilman Macon explained that is for developments that are permitted and are under construction which means any developments in process. Mayor Pro Tem Gilbert questioned the section under (a) that reads "or for vested right had been established". Councilman Macon said this means for conditional use permits and Mayor Pro Tem Gilbert added this could also mean for a change of zoning or a variance. He said that his problem is that in the language we don't say "conditional use" we say "vested right". He added that as he reads through this he is also concerned that it doesn't support the goal. He asked if we could be less invasive and get the whole fix and take a little more time with this language and we could do a little better. He said that we should give the town attorney time to look at it.

Mr. Harrell added, that as far as the demolishing for an existing non-conforming use and what started that particular discussion, he explained that last month at the original Planning and Zoning meeting someone asked what if you have a home that someone has been living in 45 years and it gets to the point where it has to be repaired beyond 50% or to be demolished and reconstructed are we going to tell someone in the community that has had a home for 45 years that they can't rebuild because it is a non-conforming use. Mayor Pro Tem Gilbert said that is what he is saying that you are opening a door because you can't say that you can demolish yours and build it back because it is 45 years old and I can't because mine is 5 years old. He explained that he feels the language is maybe opening a door if that was the spirit of trying to rebuild a building that was obsolete and being able to rebuild it back. He said that he kept reading this section and looking at angles that people could take advantage of. Councilman Macon said that (a) would not be for a house that has been there for 45 years because (a) is concerning any developments in process. Mayor Pro Tem Gilbert said but it says for any vested right that has been established and if you have a house it is a vested right. He said that he would like to see some more deliberation over this by planning and the attorney and he asked for something to fill this void and some stop-gap language.

Councilman Johnson recommended some minor changes under 18.4(d) under item (1) and (2) to change the months from 6 months to 180 days and the 2 years to 730 days for better clarity. Also he recommended adding to item (d) (2) "that if the building permit is not obtained within 730 days the reconstruction will have to be conforming." Under item (1) or a separate item (3) "certification of the original building or structure footprint

will be required.” Mayor Clark suggested that we identify it as 18.4(d)(3). Councilman Macon asked, who will certify that – the building inspector? Councilman Johnson said they will be responsible for presenting the certification when they present the letter of intention to the building inspector. Councilman Macon asked, what is going to be an acceptable certification? Councilman Johnson replied that they may have an original survey showing how the house was laid out or something that shows the original footprint – that will be up to the building inspector.

Councilman Macon asked for clarification under 18.4. Mr. Parvin explained that we struck the language that you see in 18.4 and added the language that we created (a), (b), (c) and (d).

Councilman Johnson said he had one other minor item concerning 18.4, and he asked do we need to have that saying reconstruction prohibited vs. reconstruction. He feels that if we just say reconstruction we have outlined what the reconstruction is.

Mayor Pro Tem Gilbert asked Mr. Parvin if this new language makes you rethink the goal. Mr. Parvin said the same goal was presented to Planning and Zoning and how it was interpreted and the intent of goal is really at your discretion.

Councilman Macon said that it appears that he got his hands on a different (a), (b) and (c) where (c) was actually eliminated and added into (b) because of some redundancy and he thought that it came from a memorandum from Mr. Parvin. Mr. Parvin explained that the chairman of Planning and Zoning will talk about that language because it wasn't the actual language presented by the Commission but there is some rewording that is going to be presented.

A motion was made by Councilwoman Efird to open the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Mayor Clark asked everyone to please hold their comments to 3 minutes if possible and he said that it is not necessary to swear anyone in.

Mr. Dan Wilcox, Chairman of Planning and Zoning and resident of 614 Monroe Avenue, said that he is agreement with all of the items that Councilman Johnson mentioned. One thing that he did suggest was that we change the title and that would be appropriate.

He also addressed some of Mayor Pro Tem Gilbert's concerns, starting with item (a) where it states "... for developments in process or for which a vested right ..." and he said they understood the vested right to be for a period of 2 years and he suggested some clarification. He said perhaps it should say: "... for which a vested right exists" vs. "... for which a vested right is established", so in order for it to exist it has to be within that 2 year period. He said they didn't draft (a), it was drafted by the staff and they reviewed it and felt it was an important addition because projects that get approved should be built under the requirements they were approved under. He said their understanding is if it is either in process or established for a vested right for a period of 2 years. Mayor Pro Tem

Gilbert said a vested isn't necessarily tied to the General Statute that says for 2 years. He said we are not talking about conditional use permits, we are just talking about a vested right. He understands the intent but he feels that it is interpretative. Mr. Wilcox said maybe this is something that the town attorney can look at. He said they originally had wanted him to come to the meeting but he had a conflicting appointment and that would have been something that he most likely would have addressed there and hopefully it will be tonight. He feels it is a legitimate concern.

Concerning the goals, he said they were mindful of the goals and they looked at the whole spectrum of doing nothing and at some point coming into conformance. In the old ordinance less than 50% you didn't really have to do anything and we really haven't changed that and what we have done is beyond 50%. For instance if you have a single family home that is worth \$400,000 or a condo building worth \$2,000,000 and if it is damaged to 51% you still have a substantial value left in that property and under the ordinance we had you were required to tear the rest of that value down to the ground and start over and meet all the new codes, ordinances, setbacks, etc. even if the density had been allowed so the density itself didn't really solve all of the problems. The density was the motivator for addressing these issues and we remained constant all the way through so that no matter what happened people should be able to be allowed to rebuild under the same density that the building was originally constructed under. Other than that we were mindful of making these buildings to come under conformity under three different levels of damage and the first level was is it required to come into conformity. The second level we felt that 0-49% was a pretty wide window as far as value goes so if you had a single family home worth \$400,000 and damaged 51% you still would have \$200,000 value in that home and he doesn't know of anyone who would want to tear down that home to move it over a foot or bring it into other certain requirements. We felt there should be more latitude when a substantial amount of value still exists. Then the question was, what would be the next break point and we determined it would be triggered by the foundation and that came about by some discussion that you could bring a structure down to the foundation as long as you don't modify, you could build it back up on the foundation. We discussed percentages and it just didn't seem to address the issue. The goal was that over 50% that the building come into compliance with certain conformities and then past the foundation stage that the building come into compliance with all conformities with the exception of density. For instance if you had 12 units you could build 12 back but if you had to make the footprint smaller because you had to be within the setbacks then you might end up with 12000 square foot units instead of 1200 square foot unit but then everyone would have a residence.

Mayor Pro Tem Gilbert said that his fear was that we were creating an opportunity in this language to be exploited and he read the goal and feels that it needs to be tuned. He thinks that changing the title is good. His concern was not with the spirit of what we are trying to do.

Mr. Wilcox added that in some discussion the following day with Mr. Parvin, they found some things that were redundant and things that could be cleaned up but didn't change the intent or the application of what the Commission approved. For instance in some

places we said “resident and non-residential” and when you think about it that says all buildings and there was no need to keep repeating that. They were also able to eliminate (c) by moving part of that language under (b) including the definition because although the purpose for the definition was valid after we created it we realized that when you create a definition for the ordinance you like to use one that can be used globally throughout the ordinance. He said the definition really only applied to non-conforming and instead of putting it under the definition section of the ordinance it made sense to consolidate it with that section.

Ms. Ann Bowman of 923 Coastwalk Lane, said this special public hearing is so important. She asked, in reference to the title of 18.4, aren't we really talking about nonconforming reconstruction? Councilman Johnson said yes that is what we are dealing with. She also said that she would like to see a definition of vested rights. In reference to Mayor Pro Tem Gilbert's concerns about “demolished or destroyed” she is not sure which word she would use when she looks at the Gulf Coast and she kind of likes the idea of “demolished or destroyed” because she believes some of those properties were totally demolished by the hurricane. She also asked, in reference to Councilman Johnson's suggestion about the certification of the footprint, is there anyway that we could incorporate that with the letter of intent and the certification of the footprint has to be done within 180 days rather than adding a third item. Councilman Johnson said that is what he suggested – one or the other. Ms. Bowman apologized for the confusion. Councilman Johnson said before going on, he would like to answer Ms. Bowman. He said that he doesn't feel there would be any problem giving it a different title but he doesn't think it is necessary because 18.4 comes under Article 18 which addresses non-conforming situations so it is already addressed.

There being no further public comments, Mayor Clark made a motion to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Councilman Johnson made a motion to accept the language presented by the planning department and modified by the Planning and Zoning Commission, referring to the information that Mr. Wilcox presented.

There was discussion among Council concerning which language they would be considering.

Councilman Johnson asked if the planning department concurs with the change as presented by Mr. Wilcox. Mr. Harrell said they are concurring with two things: (1) That the Planning and Zoning Commission's language as presented is what was adopted and presented to Council for approval, and (2) That Mr. Wilcox's language does not change the intent of the ordinance as presented by P&Z and it simply moves the definition to another section. Mayor Pro Tem Gilbert asked, so what you had given us in the e-mail the P&Z commissioners did not vote on that and Mr. Harrell said yes. Mayor Pro Tem Gilbert asked the town attorney if he has had a chance to look over it and if he is reasonably happy with it. Mr. Clyburn said that (a) could read more easily and he recommended the following:

- (a) Except for signs, non-conforming uses created by a change in regulations may continue to exist, and structures with such non-conforming uses may be reconstructed if demolished or destroyed for any developments in process (or for which vested right has been established).

He feels this makes more sense and is easier to read.

He also questioned if we need to define what “developments in process” means. He thought maybe it was a typo and did they really means “developments in progress”. Mr. Harrell said they did discuss “progress vs. process” and he said that basically “process” takes into account a conditional use permit that has been issued as a vested right but hasn’t been under construction, and “progress” might imply that it would be under construction. Mr. Clyburn said he can see an issue down the road was the project in process or not, what does that mean – has the shovel hit the ground or do you just have a permit, etc.

Councilman Johnson asked, do we need to vote tonight on what the planning department presented or can we vote on the change? The town clerk said you can amend the proposed ordinance as you want and the town attorney agreed and said you can craft it as you choose. The town clerk referred Council to the proposed ordinance before them and suggested that they substitute the language as needed.

Councilman Johnson made a motion to adopt Ordinance No. 06-625 Article 18 Non-Conforming Situations (*Exhibit 1*), with the following amendments:

18.4 Reconstruction Prohibited, that “Prohibited” be struck and retitled “Reconstruction”

Under 18.4(a) use the language as presented by the town attorney.

Under 18.4(b) the language that we received dated February 28th where we deleted (c) and (d) became (c), and under (c) which is the reconstruction of non-conforming building, structure or use under the provisions of Article 18.4 shall be subject to the following restrictions: (1) A letter of intention to reconstruct is to be delivered to the building inspector within 180 days from the date the building was damaged or destroyed and certification of the original building or footprint shall be required. (2) A building permit is to be obtained from the building inspector within 730 days from the date the building or structure was damaged or destroyed and if the building permit is not obtained within the 730 days the reconstruction will have to be conforming.

Mr. Harrell asked if he would also like to mention that the definition is being struck. Councilman Johnson said yes. He stated that also with the adoption of that language we are deleting the definition 23.3 Reconstruction Full.

Mayor Clark called for a vote. **MOTION CARRIED UNANIMOUSLY.**

CONSIDER ESTABLISHING A TASK GROUP TO DISCUSS ANIMAL WASTE MANAGEMENT ISSUES

Mayor Clark made a motion to establish a task group to discuss animal waste management issues and to appoint Charles Thomas, Michelle Blackledge and Polly Shaver. **MOTION CARRIED UNANIMOUSLY.**

REQUEST BY TOWN ATTORNEY FOR A CLOSED SESSION [G.S. 143-318.11(a)(3)]

The Town Attorney, Al Clyburn, requested a motion to go into a closed session pursuant to NCGS 143-318.11(a)(3) to discuss pending litigation involving the case of Coastal Plains Utilities vs. Town of Carolina Beach. A motion was made by Councilman Johnson to go into a closed session. **MOTION CARRIED UNANIMOUSLY.**

After the closed session, a motion was made by Councilman Johnson to reconvene. **MOTION CARRIED UNANIMOUSLY.**

Mayor Clark announced that Council instructed the town attorney to continue negotiations with Coastal Plains Utilities.

A motion was made by Councilwoman Efird to adjourn. **MOTION CARRIED UNANIMOUSLY.**

Respectfully submitted,

Lynn N. Prusa
Town Clerk

Approved: _____