

Dennis Barbour
Mayor

Jack Lynch
Councilman

Joel Macon
Councilman



Pat Efird
Mayor Pro Tem

Gary Doetsch
Councilman

Calvin R. Peck, Jr.
Town Manager

TOWN OF CAROLINA BEACH
1121 N. Lake Park Boulevard
Carolina Beach, North Carolina 28428
910 458 2978 / FAX 910 458 2997

PLANNING & ZONING COMMISSION MINUTES

September 8, 2005
7:00 P.M.

ITEM #1 Roll Call: The meeting was called to order by Chairman Johnson at 7:00 p.m. Those present were: Jerry Johnson, Lank Lancaster, Sarah Harris, John Keith, Mike Kopitopoulos, Linda Skipper and Dan Wilcox. Also present was Ed Parvin, Interim Director of Planning & Development; Jeremy Hardison, Zoning Administrator; and Renee Fitzpatrick, Administrative Support Specialist.

Chairman Johnson requested Planner Parvin to explain Items #6 & 7 on the agenda. Planner Parvin said that in regard to re-zonings there is a new procedure required by N.C. General Statutes. If we were to proceed with the re-zonings on tonight's agenda, they could be challenged as not valid by those standards. Therefore, we will table both items until our next meeting of October 13, 2005.

ITEM #2 Minutes for August 2, 2005. Motion made by Commissioner Lancaster to accept the August 2, 2005 minutes as proposed with administrative corrections; seconded by Commissioner Keith; all ayes.

ITEM #3 Conditional Use Permit from the Town of Carolina Beach for a public skate park located at 1121 and 1200 N. Lake Park Blvd. and on the east side of N. 7th Street. Planner Parvin read the August 5, 2005 memo as follows:

BACKGROUND/HISTORY:

The applicant is proposing to construct a skate park approximately 4,600 sq. ft. of concrete skating area. The project is located in the R-1 zoning district and is being proposed as a park. The Municipal Complex site is 6.94 acres with the front half facing U.S. 421 zoned HB and the rear section zoned R-1. The site contains:

Parks and Recreation Center	16,800 square feet
Federal Point History Center	1,536 square feet
Town Hall	20,344 square feet
Skate Park	4,600 square feet
Total lot coverage	43,280 square feet
Percentage lot coverage	22%

The rear portion of the Town Hall complex lot off of 7th Street is zoned R-1 and consists of approximately 102,939 square feet. This portion of the Town Hall tract is currently vacant with the exception of an Operations storage building.

ANALYSIS:

Maximum lot coverage within the R-1 district is 40%; the footprint of the park is approximately 4,600 sq. ft, and is of the allowable square footage. The proposed structure will be in ground or to grade with a few jumps above grade not to exceed 4' feet in height. Setbacks in the R-1 District are 7.5' (side), 20' (front), and 10' (rear). Corner lots require a 12.5' side setback. The applicant's proposed structure is setback 30' off of 7th Street, 27 feet from the Town Hall entrance, 18' from the parking lot, and 42' from Old Mariners Village. Hours of operation will be 9am until 9pm Monday – Friday, 10am to 9pm on Saturday and 1pm to 5pm on Sunday. Winter operating hours are the same with the park closing at dusk.

PARKING

Town Hall Complex:	1 per 300 square feet	68 spaces.
Parks and Recreation:	1 per 200 square feet	84 spaces
Federal Point History Center:	1 per 500 square feet	3 spaces
Total number accounted for:		155 spaces
Total provided on-site		211 spaces
Available parking		56 spaces

Parking for outdoor recreation is calculated according to *Article 7 Off-street Parking and Loading Requirements*: "Adequate to handle the anticipated normal capacity for patron use, as determined by the building inspector, plus 1 space for each employee." Inspections staff has determined adequate parking exists.

LANDSCAPING

The skate park will be surrounded by a 6' chain linked fence to prevent entrance during closed hours. Outside the fence will be a 3' grass berm for aesthetics and to reduce noise. A 10' wide Type "B" buffer yard will be required on all sides of the development. Additional vegetation will be provided in the area adjacent to Old Mariner's Village.

STORMWATER

Storm water management facilities are in place to handle all water for the site.

NOISE ANALYSIS

Town staff visited the skate park at Greenfield Lake on August 26, 2005 along with four skateboarders, two spectators, and one attendant. Music was playing inside the park with the installed surround sound system. The following results were drawn with the noise meter:

Inside the Park:	65 decibels
10 feet	65.6 decibels
30 feet	66.1 decibels (increase possibly associated with other outside noises)

Except as allowed in this article, no person shall willfully engage in any activity on any premises or public area in the town which produces or constitutes a noise disturbance on occupied neighboring premises or public area. Without limiting the generality of the foregoing, a sound or noise shall be deemed a noise disturbance if, when measured as prescribed herein, it exceeds the level set forth below:

- (a) *Residential area*: 65dB(A) (daytime level) between the hours of 7:00 a.m. and 11:00 p.m., or 55dB (night time level) between the hours of 11:00 p.m. and 7:00 a.m.

REQUIRED FINDINGS:

Specific standards. Applicant must make provisions for:

- (1) Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;
- (2) Off-street parking and loading areas where required, with particular attention to the items in (1) above and the economic, noise, glare, or odor effects of the conditional use on adjoining properties and properties generally in the district;
- (3) Refuse and service area, with particular reference to the items in (1) and (2) above;
- (4) Utilities, with reference to locations, availability, and compatibility;
- (5) Screening and buffering with reference to type, dimensions, and character;
- (6) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;
- (7) Required yards and other open space and preservation of existing trees and other attractive natural features of the land;

General conditions.

- (1) That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved by the issuance of the C.U.P.;
- (2) That the use meets all required conditions and specifications;
- (3) That the use will not 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 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

STAFF RECOMMENDATIONS:

The proposal as presented has not received any negative comments from Stormwater and Operations, Fire and Inspection. Public Park proposals are allowed with the approval of a Conditional Use Permit in R-1 zoned properties. Staff recommends the following conditions if the proposal is to be recommended for approval:

1. A letter shall be provided that stormwater and drainage can be accommodated with the proposed additional facilities
2. Drainage plan must be submitted and approved prior to issuance of a building permit. The drainage system must be installed according to approved plans and a letter signed and sealed by a licensed engineer must be provided verifying that the system is properly installed and functioning prior to issuance of certificate of occupancy.
3. Hours of operation and number of employees must be provided prior to issuance of Certificate of Compliance.
4. No structure or equipment of any description shall be erected or otherwise located outside the proposed footprint.
5. The number and types of vegetation must be included on the final plan. A certificate of occupancy shall not be issued until landscaping is planted according to approved final site plan.
6. All permits and approval letters required by all Federal, State, and Local Agencies must be submitted prior to Certificate of Occupancy.
7. A sign permit must be obtained for any new signs located on the property.

8. Certification shall be provided that all improvements, including but not limited to paving, drainage, stormwater, landscaping shall be constructed and maintained according to the site plan approved by the Director of Planning or his designee prior to Certificate of Compliance.
9. Prior to issuance of building permit a plan that includes a grading schedule, and construction schedule shall be approved by the Technical Review Committee.
10. Prior to issuance of building permit, all approval letters and final site plan shall be submitted, and items mentioned above shall be submitted and approved by the Town of Carolina Beach Technical Review Committee that includes the Town Manager, Planning and Development, Building Inspections, Operations/Stormwater/Public Works and Fire.
11. Major changes to approved plans and conditions of development may be authorized only by the town council after review and recommendation by the planning and zoning commission in the same manner as outlined in this article for original submission.

The Planning and Zoning Commission will hear this proposal at its September 08, 2005 Scheduled Meeting. The Planning and Zoning Commission recommended tabling this item at the August 11, 2005 meeting until the below items were addressed:

- a. Conduct a noise disturbance study for skate parks.
- b. Move the site closer to 7th Street and further north.
- c. Consider earlier closing times.
- d. Consider banning music from the park.

Commissioner Lancaster said he is still not comfortable with the operating hours. Planner Parvin said that the operating hours are the same as originally presented and that he can put in the condition to consider new hours and if we want to change the hours we can in our memo to Council. Commissioner Wilcox asked if there was any further explanation as to what the exterior berm consists of and Planner Parvin said it will be a grass berm about 4 – 5 feet in height with shrubs on top. Commissioner Lancaster asked if that is in addition to the 10' buffer and Planner Parvin said yes.

Motion made by Commissioner Keith to open public hearing; seconded by Commissioner Kopitopoulos; all ayes.

At this time, Chairman Johnson advised that Commissioner Harris will have to excuse herself as she is a resident of Olde Mariners.

Speaking against:

Paul Feldman, 172 Olde Mariners Way. Mr. Feldman said his company manufactures undercover body wires for police officers so he knows audio. The test that was done across town he will take issue with. (At this time Mr. Feldman brought out a decibel meter and said it is reading 65, 66 db and this is with just him speaking). Mr. Feldman said this is the Towns rule and they will be embarrassed if brought up in court. Mr. Feldman said he spoke with Ted Lashley and said he explained that this park will be right outside the master bedroom of his house and asked Mr. Lashley if he would like that to which Mr. Lashley said no. Director Lashley said he doesn't remember saying no, as a matter-of-a-fact he remembers saying he wouldn't mind it at all, that he has three kids who skate and it doesn't bother him at all.

Dave Johnson, 192 Olde Mariners Way – Mr. Johnson said he did some research on the subject of state parks and communities and has a publication issued by the Pennsylvania Department of Conservation and Natural Resources, a publication issued by the Skate Park Assoc. (SPA) on designing of skate parks and another publication from the Tony Hawk Foundation. Mr. Johnson said he emailed the Tony Hawk Foundation and asked them what distance they would recommend be provided between skate parks and residential areas in order to avoid noise issues. He received an email which said, “I spoke to a municipal sound engineer in Portland, OR and was told that, based on his measurements, an in ground concrete park at 100’ generates noise equivalent to an average conversation (approx. 65dc).” This would mean that at 100’ we would be in violation of our ordinance and as the distance decreases, the decibels increase. Mr. Johnson said the PA Dept. of Cons. & Nat. Res. discusses state park locations and it says, “Consider the impact of neighbors. State parks can generate a lot of noise and take into account the distance to residential areas. The industry recommends that skate parks should be a minimum of 150 yards from residential areas. Mr. Johnson said that where he is from the skate parks were forced to close because they were built too close to residents and the residents complained. In regard to supervision and liability, at the previous meeting it was stated that the skate park would be largely unsupervised. The PA Dept. of Cons. & Nat. Res. states that the insurance carrier may dictate the choice of whether or not this is to be supervised. Some require it and some do not, however, many hold the opinion that there is greater liability exposure created when supervision is provided, therefore, an unsupervised facility could present the least exposure to liability. SPA states that the worst liability is having a facility supervised only part of the time. Mr. Johnson said that the Towns idea of part time supervision would run the greatest risk, full time supervision would increase cost and no supervision is not in the best interest of the children.

Cory Johnson, 192 Olde Mariners Way – Mrs. Johnson said she has had time to think about what was said at the last meeting. A lot of what was heard on the pro side was “who could be upset by the noise of children’s laughter”. Ms. Johnson said she has six children of her own, four under the age of 14 and she hears children’s laughter on a regular basis and loves it just as much as everybody. Also, it was stated how the children are dying, on drugs, consuming alcohol and that concerns her greatly that it is believed that the answer to that problem would be to have an unsupervised activity. It is her belief that those children would require more supervision. Mrs. Johnson said that asking the government to fix these problems is probably not the right choice, but maybe more parental control would be the answer. Mrs. Johnson said she has nothing against a skate park at all, just not in her back yard.

Brian Metcalf, 176 Olde Mariners Way – Mr. Metcalf asked if the pictures shown as examples are only 40’ away from a neighborhood. He would like to stress they are not against the skate park, but 40’ away from their homes is disheartening.

Bill Princiotta, 184 Olde Mariners Way – Mr. Princiotta said he drove 560 miles to appear at this meeting and has a vested interest in Carolina Beach. Mr. Princiotta said he is a former builder and is a police officer for 13 years and is a Chief Petty Officer for the Coast Guard for 22 years. Mr. Princiotta said in 2003 he sat outside and listened to everything in this park and there wasn’t a sound. In 2004 he came down and bought his house and he was not told by anyone about the skate park. Mr. Princiotta referred to Mount Laurel I & II Decision and asked if anyone is

familiar with this and continued by saying it is a United States Supreme Court decision which mandates that every town must have affordable housing and town's without low income housing are getting sued. Mr. Princiotta said his point being, is anyone suing this Town because there is no skate park. Mr. Princiotta continued by saying that he spoke with several engineers and environmentalists and he was told that a skate park, on a scale of 1 – 10, is a 1 and will hurt your development and appraisals. Mr. Princiotta said he was told it wouldn't hurt the value of your house, however, it will limit the type of clientele you will sell to. Mr. Princiotta asked if the State of North Carolina has been notified about a skate park being built 100 – 200 feet from their property. At this time, Planner Parvin said all adjacent property owners have been notified. Mr. Princiotta asked if anyone knows what the seasonal high water table is and said if the seasonal high water table were to be 4' and you dig 6' for the skate park, then you would have water. At this time Chairman Johnson advised Mr. Princiotta that he was going way over the five minute limit and Mr. Princiotta said there is a constitutional law, first amendment, freedom of speech and Commissioner Lancaster said he has had his chance to speak. Mr. Princiotta requested someone else's time and stated that he drove 560 miles, 8 ½ hours, to be at this meeting and he would request an additional five minutes. Chairman Johnson said he will give him an additional five minutes after the other speakers have been heard.

D.A. Lewis, 604 Clarendon Ave. – Mr. Lewis said that when the noise study was done, there were four people using the skate park and he would like to know what happens when there are forty people. Mr. Lewis said there is nothing wrong with a skate park, but it needs to be put in the right place and the Town thought this was zoned Highway Business and then found out that it's in a residential area. Let's put this thing where it needs to be.

Leroy Franks, 908 Canal Dr. – Mr. Franks said he agrees that the park needs to be located from a residential area to the area it needs to be moved to, which is the Boardwalk, preferably next to the Marriott.

Joseph Statley, 184 Olde Mariners Way - Mr. Statley said that as a parent of six children he is aware of what they do and what they can get into and a facility such as this will draw undesirables. Mr. Statley continued by saying that this neighborhood is a quiet one and you can leave your personal belongings out in the open and asked if that will stay the same after a skate park is there. Mr. Statley said he is concerned about the noise level and the undesirables this will draw.

Bill Princiotta, 184 Olde Mariners Way – Mr. Princiotta readdressed the board and said that in the event this gets approved, he has several requests to protect their homes. If a chain link fence is installed, it should be certified like the ones for pools; plant trees and shrubs that will grow rapidly; he would like a fence installed along his backyard. Mr. Princiotta asked if the police department is dispatched from here or a central location and the answer was from a central location. Mr. Princiotta asked, who then, will be monitoring the camera 24/7.

Speaking For:

Lon Lashley, 102 Florida Ave. – Mr. Lashley said he agrees we need a skate park, but by putting the skate park at another location, you might not have the adult supervision needed. He likes it at this location because there is the recreation center and we have a police force here. Mr. Lashley suggested that there be special hours for the younger kids and maybe there should be an age limit or grouping of ages. Mr. Lashley said that the creation of a skate park could lead to other positive activities.

Chris Stellaccio, 645 Sloop Pointe Lane - Mr. Stellaccio said he thinks the skate park is a good idea and does agree with limited hours. There will be no worrying about kids hanging out at night once it's closed and locked up. Mr. Stellaccio recommended someone being there just like a lifeguard and added that nine times out of ten, kids going to a skate park go to skate.

Alan Gilbert, 601 Atlanta Ave. – Mr. Gilbert said he doesn't think there should be an age limit, that one of his greatest joys in life is when he skates with his six and ten year old. Mr. Gilbert said it seems that the main issue is that some homeowners may be potentially harmed and he would like to see some alternative site assessments and maybe some negotiations for other sites. Mr. Gilbert said that kids are going to skate and they will skate unsupervised, but he thinks we need to focus on location.

Motion made by Commissioner Keith to close public hearing; seconded by Commissioner Lancaster; all ayes.

Discussion by the Board. Commissioner Wilcox said he is still in favor of a skate park but he has some concerns. He agrees that there is probably a problem with the noise calculation and said that this council room is 42' wide which is the distance of the skate park from the backyard of the homes and this isn't a large distance. Commissioner Wilcox further stated that he was bothered by the recommendation that there be less supervision to keep the insurance rates down and he thinks it's unrealistic to expect children to follow the rules about wearing padding, etc. Commissioner Wilcox said that he would like to see some research on other locations. He would like to see a skate park, but he can't tell anybody else that they shouldn't mind having it behind their home. Commissioner Kopitopoulos said he concurs with Commissioner Wilcox in that the idea of building on city property that will be consistently in violation with a noise ordinance is the main issue. No matter what neighborhood we put the park in, there will be people that will be opposed to it and his main issue on this is that it will be consistently in violation of the noise ordinance. Commissioner Keith said he's in favor of the skate park, that kids need more recreational facilities, but he is very concerned about the lack of supervision. Kids that are left unsupervised will get out of control in a heartbeat and this is his main concern. Commissioner Lancaster said he agrees with Commissioner Wilcox about the residents concerns and he is a little concerned that the Town hasn't found time to go out and take a look at that and put it into the planning process. Commissioner Lancaster said he is glad the Town took the time to go downtown and take the measurements on their own regarding noise, but a more appropriate approach would have been to go out and look at documented reports already in existence or have an independent study done. Commissioner Lancaster said he thinks a skate park could be useful to the kids and agrees with Commissioner Wilcox that there is probably other property available that could be used. Commissioner Skipper said this is her first meeting, but she has studied the information given to her and she concurs that there are a lot of studies that maybe should have been done such as going to another skate park to see what the sound is and what the meter reads. Chairman Johnson said he concurs with the other Commissioners and he thinks the Town needs a skate park but it is a question of whether or not this site is appropriate. To approve this

without doing further studies of whether or not there are other sites, and whether or not we can abide within our own noise ordinance, would be detrimental at this time. Chairman Johnson said that in response to Mr. Franks suggestion that the skate park be built on the boardwalk, he doesn't think the Town can afford \$800,000. for a lot up there. The property mentioned by Mr. Gilbert would probably still have a problem with the noise ordinance.

Motion made by Commissioner Lancaster that the request for Conditional Use Permit for a Skate Park be disapproved and request that the Town do more research on the noise impact and public safety impact of parks and come back with some other recommendations. Also, have cost alternatives for any different sites and present another proposal for a skate park; seconded by Commissioner Keith; all ayes.

Chairman Johnson advised that Items #4, 5, 6, 7 & 8 have been pulled by from the agenda.

ITEM # 9 Amend – Chapter 14 Solid Waste, Section 14-6 Dumpsters. Planner Parvin read the August 29, 2005 cover memo as follows:

On July 12, 2005 Town Council adopted changes to our landscaping ordinance. One change was to require all dumpster enclosures to be four (4) sided enclosures.

This change to Chapter 14 (Solid Waste), Section 14-6 (Dumpsters) will make the Landscaping and Solid Waste ordinances consistent with one another.

Chapter 14

SOLID WASTE

ARTICLE I. IN GENERAL

Sec. 14-6. Dumpsters.

(c) ~~Three (3)~~**Four (4)** sides of the container shall be enclosed in an enclosure as per specifications obtained from the public works department and approved by the public works director.

Chairman Johnson said that he feels we should add in to be consistent with our conditions, that the size of the container shall be enclosed in an enclosure and remain closed and secured during inactivity as per the specifications. Commissioner Wilcox asked why we don't just state the specifications and Chairman Johnson said he doesn't know that their specifications actually say that that condition we use on all of our Conditional Use Permits and he is just saying that if we add this into our Article we should clarify this for the enclosures. Commissioner Wilcox asked if this is just for construction and Planner Parvin said no, it is for all dumpsters.

Motion made by Chairman Johnson to accept the wording with the amendment of adding "*and remain closed and secured during inactivity*"; seconded by Commissioner Wilcox; all ayes.

ITEM #10 Amend – Chapter 9 Motor Vehicles & Traffic Article VI Schedules to reduce the speed limit on Spencer-Farlow Dr. from 35mph to 25mph. Planner Parvin read the August 4, 2005 memo as follows:

The Police Advisory heard several complaints at its August meeting regarding the speed limit of Spencer Farlow being reduced from 35 MHP to 25 MHP. The Police Chief has also received several emails requesting the same due to the large increase in new development in addition to traffic created from the state boat ramp.

The Police Advisory Committee unanimously recommends reducing the speed from 35 to 25mph on Spencer-Farlow.

Chairman Johnson asked if this will begin at Old Bridge Barrier Road to the east end of it and Planner Parvin said yes, the entire length of Spencer-Farlow. Commissioner Wilcox asked Planner Parvin if he is aware of any accidents and Planner Parvin said no, he is not, but they could have had accident reports we didn't have. Chairman Johnson said that bumpers have been installed so you have to park a certain way which creates a limited amount of parking down there with a lot of traffic. Commissioner Wilcox said he doesn't understand why these traffic issues come to the Planning Board since we don't know much about traffic and Chairman Johnson said it's probably just a matter of procedure but also isn't quite sure why it's coming to us and asked Planner Parvin. Planner Parvin said that it was requested by the Town Manager that all request from the policy advisory board go to Planning & Zoning and then to Town Council.

Motion made by Chairman Johnson that since the Police Chief has received several requests and the Police Advisory Committee voted unanimous to reduce the speed, we concur with their recommendation although we have not seen any information to support this; seconded by Commissioner Wilcox; all ayes.

At this time, Planner Parvin advised that since this Item #10 was advertised and also the last item, #9, we will need to have them open for public hearing.

Chairman Johnson said let's address public hearing for Item #9. Motion made by Commissioner Keith to open for public hearing; seconded by Commissioner Kopitopoulos; all ayes.

There being no speakers, motion was made by Commissioner Keith to close public hearing; seconded by Commissioner Wilcox; all ayes.

In reference to Item #10, motion made by Commissioner Keith to open for public hearing; seconded by Commissioner Kopitopoulos; all ayes.

Speakers:

Steve Stanton, 527 Spencer Farlow. Mr. Stanton said he is here to encourage recommendation to Council to reduce the speed limit on Spencer Farlow from 35mph to 25mph. Mr. Stanton said that with Harbor Pointe building water front condos and a number of duplexes being built, there is a disproportionate volume added to a street. Mr. Stanton said the speed limit needs to be enforced also.

Motion made by Commissioner Keith to close public hearing; seconded by Commissioner Kopitopoulos; all ayes.

Amended motion made by Chairman Johnson to add that additional signage be looked into at the beginning of Spencer Farlow and Old Bridge Barrier Rd., and at the intersection of the access road and Spencer Farlow for those coming off of the bridge, and approximately half way down and at the end coming in both directions; seconded by Commissioner Lancaster; all ayes.

At this time Chairman Johnson advised that we will hear Item #11 at the end of the meeting and proceed to Items #12 & 13.

ITEM #13 – Amend Appendix A, Zoning Article 8, Sect. 2, Sidewalk, Curb & Gutter. Planner Parvin read the August 4, 2005 memo as follows:

After adopting the new Landscaping and Development Specification Standards in July Planning Staff realized a subsequent section in the Town Code also needed to be amended. The original language has been amended to allow for sidewalks to be required on both sides of a subdivision except when provisions are made to dedicate recreational open space.

SUBDIVISION

ARTICLE III. SUBDIVISION REGULATIONS*

***Cross references:** Streets and sidewalks, Ch. 15; utilities, Ch. 16.

State law references: **Subdivision** regulation, G.S. § 160A-371 et seq.

Sec. 12-130. Sidewalks.

The planning and zoning commission ~~may~~ **shall** require the sub-divider to construct a concrete sidewalk on ~~one (1) side of~~ all frontage streets and on ~~one (1) or~~ both sides of all other streets within the subdivision. The sub-divider may install sidewalks on only one side of interior streets if there are provisions made for dedicated recreational open space. The construction of all sidewalks shall be in accordance with plans and standard specifications approved by the planning and zoning commission. (Code 1977, § 9-3086)

Planning and Zoning has requested review of the curb and gutter & sidewalk requirement.

8.9 Design Specification Standards

Section 2 Sidewalk and Curb & Gutter

4. Curb and gutter and/or sidewalk requirements may be deleted by Town Council by having the applicant post an approved form of surety for the cost of the curb and gutter and/or sidewalks.

After reading Sec. 12-130 Sidewalks above, Planner Parvin advised that the original language that was brought to Planning & Zoning was to require this on both sides of a subdivision, but that change never made it to Town Council. Planner Parvin advised that at the last meeting in which we had a subdivision, they didn't want it on both sides, but rather wanted the flexibility to only allow it on one side. Planner Parvin said that is why we tried to come up with some language for that one side. Commissioner Lancaster asked what the criteria was for how much dedicated recreational open space and what constitutes recreational open space and can this be done automatically or do they need to request permission to do that? Planner Parvin said they would need to request permission and further explained that we have a definition in our zoning ordinance for open space. Commissioner Lancaster said open space is different. Planner Parvin made the suggestion to go further in detail in this paragraph and define in this what we would consider recreational space or it could be added in as a definition. Commissioner Wilcox said it seems odd to him that it says the Planning and Zoning Commission "**shall**" require rather than the "**sub-divider shall be required**". Commissioner Wilcox said we shouldn't have anything to do with it. Planner Parvin said that was existing language which we can change. Commissioner Wilcox said he would just strike it and start out by saying "**the sub-divider shall be required to construct a concrete sidewalk**". Commissioner Wilcox said that the last sentence is fine where it says "**approved by planning and zoning commission**", however, he agrees with Commissioner Lancaster that if we are the ones going to approve this, he doesn't know how to apply it. Commissioner Lancaster said that how much open

space is required relative to the size of the sub-division or number of homes or the deletion of the sidewalk. Commissioner Lancaster said that in the case we were talking about, the only part of open space they wanted to eliminate the sidewalks on was the area that fronted the retention ponds and that is certainly not recreational open space. Planner Parvin said we could approach it by increasing the landscaping requirement or several different ways or we could just not increase the requirements and make the requirement for just one side. Commissioner Lancaster said he doesn't believe you can decide unilaterally, that you need some criteria to determine this and Planner Parvin agreed saying that we need to come up with the criteria. Chairman Johnson said that as Commissioner Wilcox mentioned at the April 14, 2005 meeting that by requiring sidewalks on both sides, it tends to go against the Land Use Plan because you are creating more impervious surfaces so there seems to be a contradiction there. Planner Parvin said you could also argue that you are supporting the Land Use Plan by making it more pedestrian oriented. Commissioner Skipper said she believes it would depend on the size of the sub-division. Chairman Johnson said that we need to come up with a good formula that would take care of this regardless of the size of the sub-division, that we need to come up with a percentage that addresses the total allowable buildable area of the sub-division or some kind of criteria. Commissioner Wilcox asked Planner Parvin what he considers recreational open space and Planner Parvin said it wouldn't include your setback area or your stormwater pond, that it would have to be an area dedicated for a lot or playground, etc. Chairman Johnson added that there should be some kind of definition stipulating a minimum that recreational space has to have. Commissioner Lancaster said that in a larger sub-division, the option should not be given because typically there would be more traffic, probably not as many cul-de-sacs and you probably would need sidewalks. Commissioner Lancaster said in the smaller sub-divisions where you don't have traffic unless you live there, you probably don't need sidewalks throughout. Planner Parvin asked if they are suggesting clarification of requirements between a small sub-division and a large sub-division and Chairman Johnson asked if a small sub-division is 20 lots. Commissioner Wilcox said that a major permit is required for more than five. Commissioner Lancaster said that if we can come up with a definition for recreational open space, we could probably go with something as close to what we have here and you can say in the shaded area that ***“the sub-divider may request permission to install sidewalks on only one side of interior streets if there are provisions made for dedicated recreational space”***. Commissioner Lancaster said that if we come up with a definition for that, then maybe we would be able to figure out what the best size space is to recommend to Council. Chairman Johnson suggested that we add at the end of the sentence, ***“per the Town's guidelines”***. Planner Parvin asked if this is the format they would like to go with or would they rather go with the number of lots or other types of ways to handle this and Commissioner Lancaster said that would get more restrictive and Chairman Johnson said he is comfortable with this if we can come up with defining the area requirement for recreational open space. Commissioner Wilcox said he doesn't understand what deleting sidewalks has to do with creating open space to begin with, that it should be if you add more sidewalks, you would need recreational open space. Chairman Johnson said we are trying to get something to Council that allows a developer to have an alternative versus a total requirement of sidewalks on both sides. Commissioner Skipper asked if that wouldn't go along with having a smaller sub-division and letting them decide whether or not to do both sides and the large sub-division being required to have both sides. Chairman Johnson said that currently they are required to have sub-divisions on both sides regardless of size and Commissioner Skipper said we are here to decide on why we have to have either an open area or one side with sidewalks. Chairman Johnson said we are trying to come up with an alternative allowing them to delete sidewalks on at least one side and Commissioner Skipper asked if they couldn't be determined by the size of the subdivision. Commissioner Wilcox said it use to be that Planning & Zoning would recommend sidewalks or partial sidewalks, but we got kicked to the curb on that. Commissioner Lancaster said we should just comply with this and if they want to take a request to Council, that they don't want to do it, let them decide. Chairman Johnson said that the obvious solution to him would be to go back to the way it used to be where we made the recommendation on our end. Commissioner Lancaster said we have already been through all that and the response was no, we want sidewalks, curb & gutter. Planner Parvin said that's the way it's written in our Landscape

Ordinance, that sidewalks are required, but in this section we also said it was required on both sides which it doesn't say in our ordinance now, it only says they are required. Planner Parvin advised that what we approved last time at Planning & Zoning was that it was required on both sides and Town Council found, upon review of the last sub-division, that they didn't like that. Commissioner Lancaster suggested using the same wording as is in the Landscape Ordinance.

Motion made by Commissioner Kopitopoulos to open for public hearing; seconded by Commissioner Keith; all ayes.

Speaking against:

Rick Rogge, Canal Dr. Mr. Rogge said that sidewalks are basically to transport people on and it seems we are getting into other areas. Because of duplexes, we would need to address the need for sidewalks based on living units and also based on the different type of streets such as through streets or dead end streets. Mr. Rogge said he believes it's extremely important to reduce the amount of impervious area as we live on a small island and that he would recommend one sidewalk for a dead end street and on a through street, depending on the surrounding areas, two sidewalks might be necessary. Commissioner Lancaster said that under the presumption that we will have a stormwater system that will move water where it needs to go, what does he (Mr. Rogge) think about curb & gutter. Mr. Rogge said that curb & Gutter is now becoming the mechanism to handle stormwater and with that, what is being done is a way to channel the water. Mr. Rogge said, again, if there is a small amount of people, they could walk along the side of the road rather than create a huge impervious area. Commissioner Wilcox said we could also reduce the size of the four foot sidewalk to that of three feet reducing impervious surface by 25%. Chairman Johnson said he believes that the state requirement for sidewalks, if any, is four feet. Commissioner Skipper said she agrees with Mr. Rogge regarding the amount and size of units and she just doesn't see the need for sidewalks in a small sub-division. Commissioner Wilcox said that the Council wants them so maybe we should just set the requirement and let Council deal with the request.

At this time, Chairman Johnson asked Planner Parvin if the next item, the 8.9 Design Specification Standards, would help cover this situation and Commissioner Lancaster said that's a different issue and he believes where that says "**surety for the cost**", the words "**and later installation of the curb & gutter and sidewalks**" should be added.

Addressing the speaker, Chairman Johnson said that in reference to sidewalks on one side only, using Saint Joseph Street as an example, it wouldn't make sense to place sidewalks on either side due to the wetland type of area and creating more impervious surface. Commissioner Wilcox said he still doesn't understand the benefit of a sidewalk on one side of the sub-division if the purpose is for people to move about in the neighborhood. Chairman Johnson asked if this Section 12-130 Sidewalks is something that Council requested Planning & Zoning Department to bring to the Commission in order to come up with some ways to alter this and Commissioner Lancaster asked if this is even in the ordinance. Planner Parvin said that right now in the ordinance it says "*they may provide sidewalks*" and we had discussed language to change that at a meeting this summer to say this is required on both sides. The only part sent to Council was the Landscape Ordinance, not this section so it was left as "*may be required*".

Commissioner Lancaster said we changed that after the third time that Council turned around and told us that sidewalks were needed following our recommendation of no or reduced sidewalks. Chairman Johnson asked Planner Parvin if it was his feeling that Council may possibly be receptive to going back to "**the Planning & Zoning may or may not require sidewalks**". Planner Parvin said he believes Council wants it required but they want the flexibility of eliminating it on one side or not. Commissioner Lancaster said he would go along with Commissioner Wilcox's suggestion to move the Planning & Zoning Commission may or shall require from this and say "**the applicant or sub-divider or developer shall be required to construct concrete sidewalk(s). The construction of all sidewalks shall be in**

accordance with plans and standards specifications approved by Planning & Zoning". Commissioner Wilcox asked if the shaded section will be left out and Commissioner Lancaster said yes. Chairman Johnson said the first sentence is deleted also. Only the sentence following the shaded area remains.

There being no further speakers, motion made by Commissioner Kopitopoulos to close public hearing; seconded by Commissioner Lancaster; all ayes.

Motion made by Commissioner Lancaster to remove *the Planning & Zoning Commission may or shall require* from this and to say that "*the sub-divider, applicant or developer shall be required to construct concrete sidewalk(s). The construction of all sidewalks shall be in accordance with plans and standard specifications approved by Planning & Zoning*"; seconded by Commissioner Keith; all ayes.

ITEM #12 – Amend Appendix A zoning, Article 8, Section 2 Sidewalk and Curb & Gutter.

Commissioner Lancaster referred to 8.9 Design Specification Standards, Section 2 Sidewalk and Curb & Gutter, #4 and said that he understands that the issue is that the Council does not want to accrue money in a pool, but they don't mind bonding until construction is complete but they want the curb & gutter and sidewalk installed piecemeal. Planner Parvin said that's the way it is now. Commissioner Wilcox said he thought Operations was going to address all these issues after the joint meeting, but we haven't heard from them. Chairman Johnson said that he believes it was at the last council meeting that they considered deleting the sidewalk on a particular item but our attorney, Al Clyburn, said you can't do that because it's required. Commissioner Wilcox suggested it be made an assessment and when the block is complete, then the sidewalk be installed. Commissioner Lancaster said that the tough part about this is that the Town would have to keep records of that and this is difficult as data can be lost, papers lost, etc. Commissioner Keith asked how long a bond is good for and Commissioner Lancaster said it could be forever. Chairman Johnson said that they need a mechanism per Attorney Clyburn to allow them to delete the requirement of having curb & gutter or sidewalks should they want to and at that time they could not do it because it is required per the current ordinance. Chairman Johnson said he was trying to implement something to take the monkey off of their back or our back. An example would be the triplexes we recently approved on Canal Dr. It doesn't make sense to put sidewalks there of less than 50' in length when as far as you can see, there are no other sidewalks. Commissioner Wilcox said the problem he sees with a bond and with an assessment is that those will be based on the value that we have today and if the sidewalks aren't placed until 6 or 10 years from now, the Town may end up paying the difference, however, if an assessment agreement could be signed with no money collected and in ten years you are ready to put in the sidewalk, you then assess them. Chairman Johnson suggested having some form of payment for the cost of what the sidewalk, curb & gutter would be and put that money into a curb & gutter and sidewalk fund for the existing curb & gutter and sidewalk in Town that needs repair. Commissioner Wilcox said you would be charging someone under the premise that the money is for improvement directly in front of their property and then that money is used somewhere else for someone else's benefit. Commissioner Lancaster said he doesn't see a problem in putting the money into an investment/savings account or whatever is allowable by the state. Commissioner Wilcox asked what would happen in the event the work is never done, then the Town would have money that it shouldn't. In addition, Commissioner Wilcox said that once the sidewalks are in, who is responsible to maintain them since we can't keep up with the ones that already exist. Commissioner Wilcox suggested we use the old language which would give Council the flexibility they want. Planner Parvin said he does not believe the Council wants an out for sidewalks, but rather the flexibility for one side or two sides. Chairman Johnson said that to have sidewalks put in next to existing homes with no sidewalks doesn't make sense and Commissioner Wilcox suggested we ask Council to obtain the feedback from Operations that was requested five months ago and have another joint session before making any decision on these. Commissioner Lancaster said that the really bad thing about the North End having piece meal sidewalk,

curb & Gutter is that we don't have a clue as to what the elevation of the street surface should be to manage water up there. Commissioner Wilcox said there was a problem with a driveway up there and when trying to get it straight, there was a three inch difference across thirty feet.

Motion made by Commissioner Keith to open for public hearing; seconded by Commissioner Kopitopoulos; all ayes.

Speaking for:

Rick Rogge, Canal Dr. Mr. Rogge said that right now with stormwater you pay money into the stormwater fund which is applied to solving stormwater problems throughout the whole Island and he agrees with what Commissioner Wilcox said regarding somebody paying for curb & gutter and it going someplace else. Mr. Rogge said the only way to start creating sidewalk, curb & gutter is to create a fund which maybe should be when there is a new building or maybe when there is a transfer of property. An assessment can also be an option where you would charge all property owners on, for example, Spartanburg, and have the whole block done at one time, whether it's a triplex or single family. With regard to the triplexes that are going before Council next month, Commissioner Wilcox said that maybe we could work through this issue. Commissioner Lancaster said Council could require them to bond it until they are ready for their certificate of occupancy. Chairman Johnson said that right now it is required and that's all the Council can vote on. Planner Parvin said they can bond this until they are ready for their C/O and Chairman Johnson said that's true but they can't delete the requirement of the sidewalk. Planner Parvin said if we came up with new language prior to them placing in the sidewalk, they could submit a minor modification. Chairman Johnson said that maybe we should request a workshop to discuss this in order to work out these two items.

Motion made by Commissioner Keith to close public hearing; seconded by Commissioner Lancaster; all ayes.

Motion made by Commissioner Lancaster to change #4 to read: *Curb and gutter and/or sidewalk requirements may be deferred by Town Council by having the applicant post an approved form of surety for the cost and subsequent installation of the curb and gutter and/or sidewalks*; seconded by Commissioner Wilcox; all ayes.

At this time, Chairman Johnson asked Planner Parvin to request a joint session with Town Council to discuss Item #12 (8.9 Design Specification Standards, Section 2). Commissioner Wilcox said we are still waiting for their findings on some way to base stormwater fees. Commissioner Wilcox said we are building two exact buildings on Canal Dr. and the property owner who owned their property for a long time can pay a \$5,500. stormwater fee and is done, but the one who just bought his property with an updated appraised value will probably pay 20 times that. This was addressed in the past and we haven't heard anything. Planner Parvin said he believes Charlotte Buckley was intending on addressing some of these issues at the next meeting, but he'll check on this.

ITEM #14 Amend – Article 23, Section 23.3 Definitions to add a definition for High-rise. Planner Parvin read the August 25, 2005 memo as follows:

Planning and Zoning has asked staff to add "High Rise" as a definition in the zoning ordinance. Planning Staff has included for your review possible language for this term.

Article 23 Definitions

Construction Dictionary (recommended language by Planning and Zoning Commission)

High Rise: A multi-story building over six (6) stories and/or sixty (60) feet.

Other NC and SC municipalities with high-rise definitions:

Charlotte

High Rise Building. (Those exceeding five (5) stories.)

Chapel Hill

High rise building under the terms of this division shall mean any building over fifty (50) feet in height.

Charleston, S.C.

Special height and area modifications for residential structures in excess of fifty (50) feet ("high rise")

Greenville, S.C.

High-rise apartment means any building which contains not less than 20 dwelling units and exceeds five stories or 50 feet in height, whichever is greater.

Commissioner Kopitopoulos said he likes the one recommended by Chairman Johnson because some of the other ones go into residential and there might be commercial. Commissioner Lancaster asked if it is over six stories or six stories and over and Planner Parvin said the way he reads it is that seven stories makes it a high-rise. Commissioner Wilcox asked if it's considered a low-rise if its 4 stories and Planner Parvin said there are ordinances which have high-rise and low-rise and usually around five or six stories is a low-rise but that's usually for a large city. Commissioner Wilcox asked if there are any caveats that come with that such as a person wants to give up some setback and go over the 50' height. Will the designation of high-rise in our ordinance or the fire department automatically make them jump through any more hoops and Planner Parvin said that right now it will not change anything. Chairman Johnson said we may want to consider striking out "multi-story" and just say "a building". Commissioner Lancaster said that by definition if it's over one story, it's multi-story. Commissioner Lancaster suggested running this by the fire chief as to whether or not we should have fire systems in that meets these requirements. Commissioner Wilcox said that this sentence says that "multi-story buildings over six stories", which sounds redundant, goes on to say "and/or sixty feet". Commissioner Wilcox said that what it is clarifying is that the sixty feet has to be in conjunction with it being a multi-story, not just a sixty foot high structure. If you take out multi-story, then the sentence will read, "a six story building or a building sixty feet tall" without regard to the stories. Chairman Johnson suggested just leaving the "multi-story building over five stories and/or fifty feet".

Motion made by Commissioner Keith to open public hearing; seconded by Commissioner Kopitopoulos; all ayes.

There being no speakers, motion made by Commissioner Keith to close public hearing; seconded by Commissioner Kopitopoulos; all ayes.

Motion made by Chairman Johnson to have the definition read: *A multi-story building over five stories and/or fifty feet*; seconded by Commissioner Skipper; all ayes.

ITEM #15 Amend – Article 18 Non-conforming Situations, Section 18.2 Non-conforming lots.
Planner Parvin read the July 7, 2005 memo as follows:

Recently, several citizens have approached planning staff with a zoning interpretation issue concerning 18.2 c of the Zoning Ordinance Planning Staff has included for your review suggested language in sections 18.2 of the Town's Zoning Ordinance.

With changes to the zoning districts and ordinances, zoning classifications should not have been used in past LUP's, as tidal impacts affect other zoning districts. The Carolina Beach "Building Line" is still valid in the Town of Carolina Beach Code of Ordinances and continues to impact building footprint today. With the Zoning Ordinance change in 1984 and 2000 (Current Ordinance) the Carolina Beach "Building Line" and its impact on lots may have been inadvertently removed from the Zoning Ordinance. In zoning districts affected by the Carolina Beach Building Line or Kure Beach's Beach Re-nourishment Easement Line and lots that have lost area due to estuarine and ocean tidal waters or Carolina Beach Erosion Control and Hurricane Wave Protection Projects, a 50% reduction in front yard setbacks would also include the MF and T-1 zoned properties.

FACTS:

1. The Town of Carolina Beach Zoning Ordinance in 1979 made provisions for a reduction in the front yard setback for the current MF (RA-5A) zone from 10' to 5'.
2. The Town of Carolina Beach Zoning Ordinance (1979) identified the 1963 "Building Line" as a reason for allowing the reduction in setbacks.
3. The Town of Carolina Beach Zoning Ordinance (1984) states "Ten (10) feet, provided that the modifications described in Article 300 are applicable to this district." (Tidal Water Impacts)
4. The 1963 "Building Line" as identified in (Section 117) is still in effect in the Town Code of Ordinances.
5. The determination of actual lot area in these areas can be made by the Zoning Administrator.

Planning Staff recommends approval of the proposed language and forward to Town Council for approval at the October 11, 2005 Town Council Meeting.

18.2 Non-conforming lots. (Amended 07/13/04, Ordinance No. 04-558)

(c) *Reduction of required lot area when lost to shore erosion.* Where lots abut the estuarine tidal waters, as defined in Article 23, and where lot depth has been lost due to the encroachment of such waters, making such lot area non-conforming to the zoning district requirements, the existing lot area may be considered conforming to meet the minimum lot area requirements of the zoning district in which located. However, the front and side yards of the zoning district shall apply.

- For sound-front lots located within the R-1 and R-1B zoning districts, a fifty (50%) percent reduction in the front yard shall apply
- *Where the Carolina Beach Building line creates a reduction in lot area that supersedes the CAMA sixty (60) foot setback line a fifty (50) percent reduction in the front yard may apply where appropriate provisions are made for off-street parking.*

Lots which have lost area due to estuarine tidal waters or Carolina Beach Erosion Control and Hurricane Wave Protection Projects may be developed in accordance with all applicable permitted uses of the zoning district in which located, provided that the actual lot area above the mean high water level shall be utilized when computing the density for multi-family dwellings per lot. The Zoning Administrator shall make the determination of actual lot area. Appeals to the decision of the Zoning Administrator shall be made to the Board of Adjustment in accordance with the provisions of Article 21.

Planner Parvin said that essentially areas where the building line is in front of the CAMA setback line, they could ask for a reduction in that setback. Commissioner Lancaster asked if "in front of" refers to seaward or shoreward and Planner Parvin said shoreward. Chairman suggested this be put in to make it clear. Chairman Johnson referred to the part not shaded and asked if the MF and T-1 shouldn't be included in that and Planner Parvin said that originally we didn't want to include zones due to the fact that they change. Chairman Johnson asked if, for sound front lots, shouldn't T-1 be included because we have

some sound front in T-1. Planner Parvin said you could say R-2 should be included also, maybe we should remove the zoning from section theas well and say for sound front lots. Commissioner Lancaster said that the in 18.2, (c), the first bullet would say “for sound-front lots, a fifty percent reduction in the front yard setback shall apply where appropriate provisions are made for off-street parking”. Commissioner Keith asked how this affects the 40% lot coverage and Planner Parvin said you still have to meet your 40% lot coverage. Commissioner Lancaster suggested that, in the second bullet, we make the parking language the same as it was in the first bullet “where appropriate provisions are made for off-street parking”. Commissioner Lancaster then said that the first bullet will read, “***For sound-front lots, a fifty (50%) percent reduction in the front yard setback shall apply where appropriate provisions are made for off-street parking.***” The second bullet will read, “***Where the Carolina Beach building line creates a reduction in lot area that supersedes the CAMA sixty (60) foot setback line a fifty (50%) percent reduction in the front yard setback may apply where provisions are made for off-street parking***”. Planner Parvin said that sounds good.

Motion made by Commissioner Keith to open public hearing; seconded by Commissioner Lancaster; all ayes.

Speaker:

Rick Rogge, Canal Dr. Mr. Rogge asked if this will have an effect on the lots on the north end of CB Ave. North up near the pier on the 1700 block. There are narrow lots there that people have tried to develop over the years and they were squeezed. They came and asked he believes, the BOA, for revisions in the setbacks so they could squeeze in tall, skinny houses right next to the rocks. Mr. Rogge said that at that time there was no way to provide for that and he would like to know if this change will open up the opportunity for people to build these funny looking houses. Planner Parvin said he believes the CAMA line is more restrictive in that case. Zoning Administrator Hardison said that the further north you go, the building line runs right with the CAMA line.

Motion made by Commissioner Keith to close public hearing; seconded by Commissioner Lancaster; all ayes.

Motion made by Chairman Johnson to approve with the amended language as defined; seconded by Commissioner Lancaster; all ayes.

ITEM #11 Chapter 12 Planning and Development Article 4, Flood Damage Prevention of the Town Code of Ordinances. Planner Parvin read the August 30, 2004 as follows:

Prior to the adoption of our new flood maps becoming effective, there is a six (6) month compliance period during which we must evaluate compliance of our current Flood Damage Prevention Ordinance. Since there is new language required in association with using and adopting these new maps and also to comply with the NC Flood Act of 2000, the North Carolina Division of Emergency Management has revised the NC Model Flood Damage Prevention ordinance. These model ordinances satisfy all current State and Federal minimum requirements for participation in the National Flood Insurance Program with regards to the adoption of required floodplain management regulations.

Due to needed clarification of the older ordinance language over the years, the state model has been reorganized, simplified and expanded. A summary of the changes and updates to the state model ordinance is listed below:

Page 8 DIVISION 2 DEFINITIONS

The elevation requirements such as meeting BFE + 2' freeboard is all now tied into a definition called Regulatory Flood Protection Elevation. This Regulatory Flood Protection Elevation term will determine how high one must protect the structure.

Reference Level is also defined in the ordinance and represents the lowest point on the structure that must meet or exceed the Regulatory Flood Protection Elevation.

Planning and Zoning recommended adopting the second definition listed for "Reference Level" at its August 11, 2005 meeting.

Page 12 Sec. 12-179 (1-3)

Separates the requirements for floodplain development applications, permits, and certification

This section was reorganized to help clarify the permitting process.

Page 14-16 Optional Language

Under "Permit Requirements" there is an option to adopt language that would require additional information on the Floodplain Development Permit.

The Planning and Zoning Commission recommended adding this language at its August 11, 2005 meeting.

Under "Certification Requirements" there is an option as to how many Elevation Certificates shall be required.

The Planning and Zoning Commission asked for recommendations from Building Inspections on which Elevation Certificates to require. Staff has reviewed each certificate and would recommend requiring all three for the following reasons:

- 1. The initial Elevation Certificate allows staff to determine the elevation of the lot to see if the proposed plans meet the flood ordinance as to the elevation of finished materials. Also to determine location of electrical, mechanical, and plumbing connections and the location of any associated platforms.*
- 2. The second Elevation Certificate allows the building inspector to ensure the building meets flood elevation.*
- 3. The final Elevation Certificate gives staff confirmation that all new development is in compliance with our flood ordinance.*

Page 25 Sec. 12-183(10)

Prohibits solid waste disposal facilities, hazardous waste management facilities, salvage yards and chemical storage areas.

The Planning and Zoning Commission asked for clarification on this item before approval. Planning Staff contacted Tammy Riddle with NC Emergency Management. Her response follows:

"One of the main issues with liquid storage tanks is that they must be anchored to prevent flotation, collapse and lateral movement. These are considered structures under the NFIP by definition and therefore these tanks, including fuel tanks, must be protected to BFE or locally adopted freeboard. Since these are non-residential, elevation is not mandatory. The key is that they are protected according to the general standards section of your ordinance."

Page 26 and 27 Sec. 12-184 (3)

Instead of making special provisions for manufactured homes they will be held to the same standard as other development.

- a. New or replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation, as defined in Division 2 of this ordinance
- c. All foundation enclosures or skirting shall be in accordance with Sec 12-184 (4).

Page 32

Any accessory structure over 150 square feet will have to be elevated to meet the Regulatory Flood Protection Elevation. Previous requirements were for accessory structure with a value of \$3,000 or more had to be elevated.

This is new mandatory language that can only be reviewed before adoption.

Page 33 Sec. 12-187

Requirements for riverine floodplains with BFE but without established floodways or non-encroachment areas.

The Town of Carolina Beach does not currently have areas that fall under this category, but the section was preserved to meet the requirements of the model ordinance.

Planning and Zoning Request:

Planning Staff asked Tammy Riddle with NCEM as to the maximum allowable fine for violations of this ordinance. Her response:

“The \$50 is just a minimal guideline and is really not much more than a slap on the hand to most. This fine amount is up to the community to set.”

In regard to Page 14-16 Optional Language, Commissioner Wilcox said he understands the recommendations, but he thinks three elevations surveys on a project is excessive and some creative thought process could come up with two. Commissioner Wilcox asked if the first elevation survey is part of the building starting and Planner Parvin said that is correct. Commissioner Wilcox asked if the second is when the structure is up and all the utilities, etc. are in place and Planner Parvin said that's correct. Commissioner Wilcox said his point is that nothing of substance can change between the second and third elevation survey that couldn't be seen and he sees no reason to pay another \$350. Commissioner Lancaster asked if the concrete is in for the second survey and Commissioner Wilcox said no, not always. Chairman Johnson said he's confused like Commissioner Wilcox as to why the second one is required since the final one has to be certified. Planner Parvin said it sounds as if we would like to include number one and three and instead of number two, we could still put language in here. Chairman Johnson asked when the second elevation certificate is required and Commissioner Wilcox said he believes it's at framing inspection. Commissioner Keith asked if you need the flood proof certificate for your insurance and Commissioner Wilcox said you need the final elevation survey for your insurance. Commissioner Lancaster said it reads that the reference level is established in the second survey or after the second survey. Commissioner Keith said it seems to him that all three need to be done at some point. Commissioner Wilcox said that in reality there is nothing you're going to build on Canal that you need a beginning elevation survey for, everything is in the flood district. Commissioner Lancaster said he has to apply everywhere in Carolina Beach, not just the flood zone to which Commissioner Wilcox said it's not

being done to his knowledge. Zoning Administrator Hardison said it's not required now. Commissioner Lancaster said that in order to get insurance in Carolina Beach, most lenders will require you to have an elevation certificate even if you do not live in a flood zone and Commissioner Wilcox said they usually get that with the third inspection. Commissioner Lancaster asked why the Town requires the first one and Zoning Administrator Hardison said it helps staff when determining height level so we know how many feet he has to be off for his first floor and if he has four floors of living space, he's automatically going to be at 50' height in addition to this being sometimes a means to preclude problems down the road. Commissioner Skipper asked if we have all the facts to make this decision and Commissioner Lancaster said we do. Chairman Johnson said that in regard to the second certificate which could possibly be the first one, if the builder in a flood plain was allowed to put in the first piling, then establish your reference elevations. Commissioner Wilcox said that his point is that it's all in the flood plain so what difference does it make. Commissioner Lancaster suggested eliminating the first survey because it's the same as the one listed here except in this one you get a certificate. At this point Planner Parvin asked if we are going to leave all three and Commissioner Wilcox said yes, however, these are not exactly the order in which they are being done or how they are being done. Zoning Administrator Hardison said the first one is done at the permitting stage. Commissioner Wilcox said the second one, as written, is expected to be done seven days after the first and this is impossible. Commissioner Lancaster read it as follows, "any work done within the seven day calendar period prior and prior to submission. Prior to submission of the certification are to be done at the permit holders risk." Commissioner Lancaster said if you do it outside of the seven day period, it's on you. Commissioner Wilcox said that's protection for the Town in case they don't require you to do it within the seven days, but it doesn't relieve the builder from doing it in seven days should someone push the issue. Commissioner Wilcox asked if we have to use that language and Planner Parvin said no. Further discussion was held as to how many surveys there should be and the requirements of each and Chairman Johnson suggested that Planning get together with Building inspector Van Paxton in an effort to construct this whereas only three surveys would be required. Planner Parvin said he would like Commissioner Wilcox to be part of the meeting and Commissioner Wilcox said that would be fine.

In regard to Page 25 Sec. 12-183(10), Commissioner Lancaster said they won't put in a decent sized tank now without anchoring it.

In regard to Page 26 & 27 Sec. 12-184(3), no comments.

In regard to Page 32, Chairman Johnson asked if it was 150 sq. ft. and Planner Parvin said that's correct, that his memo omitted that.

In regard to Page 33 Sec. 12-187, Planner Parvin said these areas are not in existence in the Town but this section was preserved to meet the requirements of the model ordinance. Should we annex new areas, it could become relevant. Commissioner Lancaster said we do still have some drainage creeks that flow into the basin on the west side unless they've been filled in and asked Planner Parvin how he knew we didn't have any and Planner Parvin said he thinks he looked at just rivers and streams but other areas could be classified as such.

In regard to Planning and Zoning Request, Commissioner Lancaster asked if we were going to talk to Council about the amount of the fine and Planner Parvin said we could make a recommendation to present to Council. Chairman Johnson said that the way it reads, if it was increased to \$500. for example, any person who violates this article or fails to comply with any of its requirements shall, upon conviction thereof, be fined. Commissioner Lancaster said he feels \$50. per day would be okay, but does this mean they have to be tried and convicted of each separate offense. Chairman Johnson asked what other municipalities are using and Planner Parvin said they are going through the same process we are but most

people use the standard of \$50. Commissioner Wilcox suggested we word it to say that upon conviction you will be charged \$50. for each day you were in violation. Commissioner Lancaster agreed, however, would like it to say "you will be charged not less than \$50. or in prison for not more than 30 days or both". Commissioner Wilcox suggested wording it as follows: "no less than \$50. per day for each day beginning on the first day of violation and ending at the time of compliance". Chairman Johnson asked if a clean copy of this be received after Council sees this and approves it and Planner Parvin said we will put a clean copy in our ordinance.

Motion made by Chairman Johnson to table the adoption of the 2004 N.C. Model Flood Damage Prevention Ordinance until resolution of the elevations certificates required, reference page 15 of the ordinance; seconded by Commissioner Lancaster; all ayes.

ITEM #16 Non-Agenda Items. Commissioner Wilcox asked what the status is for the ARB (Architectural Review Board) for the CBD or are we the ARB and Planner Parvin said that's correct. Commissioner Lancaster said we don't have one until we integrate architectural review standards into the zoning ordinance. Commissioner Wilcox said that if we have an old set of Standards in place and changed the governing body, can't we still use the old ARB requirements and Commissioner Lancaster said we could if we wanted to do that. Commissioner Wilcox said he isn't a big ARB person but there is a building he drives by which has big splashes of paint falling off of it and it's terribly ugly. Commissioner Lancaster asked if the code enforcement officer couldn't take a look at this.

At this time in regard to the Billitto CUP, Chairman Johnson said that he would like to know how we released a certificate of occupancy when we put the condition that there should be some type of railing fenced barrier around that decking and we suggested a top rail, a mid rail and lattice to which he could then add the rope and fishnetting. Planner Parvin said he doesn't believe a C/O was released and Chairman Johnson asked then how he is open for business and Planner Parvin said he shouldn't be to which Chairman Johnson said to close him then. Planner Parvin said our recommendation was a fence that would meet Town regulations which we believe renders his fence okay. Chairman Johnson said we suggested the height and type. Commissioner Wilcox said it was suggested, but that's not how the motion was formed and Planner Parvin said he had to go by what the motion said which was just that there had to be a fence and we have permitted rope fences. Chairman Johnson said that if he doesn't have a certificate of occupancy, he should not be allowed open and nobody in the town is doing anything about it. If we are not going to do anything about that then why are we wasting our time having these meetings. Planner Parvin said we will address this. Chairman Johnson said that we will have to be a lot more careful when making motions.

Commissioner Lancaster said he was looking at the zoning map and on Dow Rd., the glove factory, it looks like a small bomb exploded and a construction company seems to have set up shop. It appears that that corner is zoned industrial. When we went back to prepare the zoning map for the new Land Use Plan, the recommendation was that all of that industrial area is going to be residential and he certainly hopes that corner was included in the change. Planner Parvin said we have had code enforcement looking at that. Commissioner Lancaster added that there is no way that palm trees can be construed as shade trees of any sort, so permitting palm trees to be included for any kind of tree in a landscaping plan where shade or foliage is supposed to be provided, that's absurd. Commissioner Lancaster continued by saying

that if we have palm trees listed as one of the trees acceptable for anything other than decoration, we need to fix that. Planner Parvin said it is not included in our list of approved trees, but we have allowed them as under story tree. Commissioner Lancaster said they do not provide any shade and they need to be removed from our list. Commissioner Wilcox said they would be allowed to have as an addition to the shade trees, but not in place of them and Planner Parvin said he will start to enforce it that way.

Chairman Johnson asked about the follow-up survey for the CBD existing parking requirements and said he would like to have that for the next meeting. Chairman Johnson said we need to know now what our commitment is to date. Commissioner Kopitopoulos added we need to know how many spaces we gave away and Chairman Johnson said whether or not projects are finished or not, he would like to know the number of spaces we have committed to versus the town's parking spaces. Chairman Johnson added that when this is done to keep in mind that there may be some businesses on the boardwalk that are closed, such as Britts which we will still need to run that number since that requirement will come right back come next March 1st. Chairman Johnson said he would like to revisit the 18.4 on the reconstruction prohibited regarding the language about people being able to rebuild. Planner Parvin said that the fire chief recommended not having that language in there and Chairman Johnson said we need to come up with some kind of protection for these people or the town will be open to lawsuits. Commissioner Lancaster said if they have a sixplex up there, they will build that back again in the same footprint they are in, but it has to meet current code in terms of construction technique, fire protection, etc. Commissioner Wilcox asked what it was the fire chief didn't like and Planner Parvin said the arson was his concern. Chairman Johnson said he thought he asked Planner Parvin to check with Atlantic Beach, Myrtle Beach, etc. on what they are doing. Chairman Johnson said we also need to address the 18.5, the change in kind of non-conforming use and the 1 ¼ multiplier for multi-family in planned unit developments. This needs to be clarified that that can only be used when losing land for wetlands, not just to squeeze in another unit. Commissioner Wilcox said that was to be used also for smaller units and groupings.

At this time Chairman Johnson introduced Linda Skipper to the Commission as a new member.

ITEM #17 Adjournment. Meeting was adjourned by Chairman Johnson at 12:40 a.m.

Respectfully Submitted,

Renee M. Fitzpatrick, Secretary
Planning & Zoning Commission