



***AGENDA***  
**SPECIAL MEETING OF THE  
CAROLINA BEACH TOWN COUNCIL**  
**Municipal Administration Building**  
**1121 N. Lake Park Blvd.**  
**Carolina Beach, NC 28428**

***Friday, August 22, 2008***

***6:00 P.M.***

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- ITEM #1** Call to Order by Mayor Macon
- ITEM #2** *Public Hearing* - Consider Land Use Plan Amendment – Height Limit in Commercial 2 District
- ITEM #3** Consider Amending the Zoning Ordinance to Include a Definition for “Appurtenances”
- ITEM #4** Consider Amending the Zoning Ordinance Definition of “Building Height” to Exclude Appurtenances Associated only with Hotels
- ITEM #5** Adjournment

Joel Macon  
*Mayor*

Alan Gilbert  
*Councilman*

Jerry Johnson  
*Councilman*



Dan Wilcox  
*Mayor Pro Tem*

Pat Efird  
*Councilwoman*

Timothy Owens  
*Town Manager*

TOWN OF CAROLINA BEACH  
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Carolina Beach, North Carolina 28428  
(910) 458-2978  
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## Memorandum

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TO: Honorable Mayor, Town Council  
FROM: Gary Ferguson, Planning Director  
RE: Land Use Plan Amendment  
MTG DATE: August 22, 2008

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On July 22, 2008 the Planning and Zoning Commission and Town Council had a joint meeting where Staff was directed to advertise for a public hearing to amend our 2007 Land Use Plan (LUP). The amendment addresses the C-2 Future Land Classification Area as it relates to maximum building height. In the Land Use Compatibility section of the LUP there are two policies that address building height. Policy 32 reads, "The Town policy on height for the Commercial 2 area shall require no commercial structures to exceed 115 feet. Any structure with residential units shall not exceed a maximum height of 50 feet unless the one- to -one rule is applied not to exceed 60 feet. The Town will undertake a master planning effort with ample public participation in the Commercial 2 area and other areas that tie into the Commercial 2 and Boardwalk Area." Staff is not proposing to amend this policy but instead policy #30. More specifically Staff is proposing, at the request of the Hilton, to modify Policy #30 which currently defines maximum building height to include the highest appurtenance on the structure. The Policy reads, "Building Height shall be defined as that distance measured from the highest appurtenance on the structure to:

1. The front street line.
2. The nearest front street line where there is not an adjacent right-of-way.
3. An average of each front street line on through lots."

The purpose of this amendment is to accommodate ten (10) additional feet of building height for the Hilton as well as all other future hotels in the same Land Classification and thereby raise the maximum building height from 115 feet **including** appurtenances to 115 feet **excluding** appurtenances. To accomplish this amendment request, Staff presented the following two options at the joint meeting:

**OPTION 1:** This option keeps specific regulatory language in the 2007 Land Use Plan.

30) Building Height:

(A) Building height shall be defined as that distance measured from the highest point of the structure to:

1. The front street line.
2. The nearest front street line where there is not an adjacent right-of-way.
3. An average of each front street line on through lots.

(B) Appurtenances such as parapet walls, skylights, domes, flagpoles, cooling towers and structures for housing elevator equipment, stairways, tanks, fans, air conditioning or similar equipment required for the operation or maintenance of the building may be erected above the maximum height requirement if placed on the roof of the building.

32) The Town policy on height for the Commercial 2 area shall limit commercial structures to 115 feet excluding appurtenances as defined in policy 30 (B). Any structure with residential units shall not exceed a maximum height of 50 feet unless the one-to-one rule is applied not to exceed 60 feet. The Town will undertake a master planning effort with ample public participation in the Commercial 2 area and other areas that tie into the Commercial 2 and Boardwalk Area.

**OPTION 2:** This allows the 2007 Land Use Plan to be utilized as a guide for making future modification to the zoning ordinance.

30) The Town shall maintain a clear method for measuring building height in the zoning ordinance. This definition shall establish a fair method independent of individual lot grades.

32) During the 2007/2008 Central Business District master development plan process, the Town, general public, private developers, applicable development regulatory agencies, and community interest groups discussed and developed build-out scenarios that brought to the community a plan for reaching the goal of revitalization and sustainability for the Boardwalk and Central Business District. Implementation of specific heights in the zoning ordinance will be done pending the Town choosing the appropriate development scenarios. Each development concept places an emphasis on striking an appropriate balance between building massing, public space and enhancement of public access/ views to the ocean.

### ANALYSIS OF OPTIONS

It should be noted that Option 2 was not discussed at our joint meeting, and although it may be a viable and preferred option, it is significantly different and a major deviation from the current policies. Making such a change would most likely require a full review by the CRC.

In reviewing Option 1 in more detail, Staff is concerned that this allowance may open the door too wide and pave the way for any commercial or residential buildings to have a limitless height for any and all appurtenances. If Option 1 was adopted in the zoning ordinance it could have a

negative aesthetic impact Town-wide. Therefore, in order to restrict this allowance for additional building height and to minimize the degree of policy change, staff is now proposing the language below to amend policy #30 only:

### **ALTERNATIVE POLICY #30**

- Building Height shall be defined as that distance measured from the highest appurtenance on the structure to:
  1. The front street line.
  2. The nearest front street line where there is not an adjacent right-of-way.
  3. An average of each front street line on through lots.
  4. Hotels – appurtenances ten (10) feet or less in height shall be exempted from the height measurement.

### **POLICY #32 – LEAVE AS IS**

With this alternative policy #30, Staff is proposing to define appurtenances in the Town zoning ordinance and not include this language as a definition in the 2007 Land Use Plan. In addition, the above language is the exact wording that has been advertised in the newspapers and posted in the Town Hall Complex. This alternative policy change would accomplish the following:

1. Maintain heated space or occupancy area to a maximum height of 115 feet.
2. Restrict the applicability of this allowance to only hotels in the C-2 Designation; and
3. Restrict the height of appurtenances to a maximum of only ten (10) feet above the permitted maximum building height of 115 feet.

It should be noted that this Land Use policy change will only effect or regulate those areas of the Town that are located within an “Area of Environmental Concern” (AEC’s) as designated by the Division of Coastal Management. Within these AEC’s CAMA has jurisdiction, and they must examine our Land Use Plan for consistency when permitting CAMA Major Development plans. For those areas outside of AEC’s but within our CBD and for commercial uses and services, and entertainment, “maximum building height shall be solely based on Conditional Use Permit Review” as prescribed in Section 3.9-1 of our zoning ordinance (see Exhibit #1). What this means is that consistency with the Land Use Plan outside of AEC’s is not a mandate and, therefore, no building height cap exists for these uses in the CBD zoning district. These projects must however obtain a CUP from the Town Council in order to exceed the maximum zoning height requirement of 50 to 60 feet.

### **Discussion**

From a Staff perspective, this proposed policy change assumes a number of value latent issues including the following:

1. The Town values the construction of high rise hotels in a portion of our CBD.
2. The Town is willing to accommodate additional building height to achieve the value noted above.
3. The 2007 Land Use Plan should be flexible enough to allow this increase in height with no appreciable negative impacts (e.g. density, parking, stormwater, etc.)

4. This amendment will not result in a significant policy change as the over arching goals and values found in the Land Use Plan will be maintained

Some, and perhaps many, individuals may not agree with these assumptions, most notably those who were directly involved in crafting the Land Use Plan policies as members of the Public Participation Plan, Planning and Zoning Commission and Town Council. Recognizing this from a Staff perspective, the question of building height does not lend itself to a “right or wrong” or objective answer but instead to a very subjective answer about how we want our community to look. Building height does, to a large degree, define a community and as such this question is best answered by the people and their elected representatives and not the Planning Staff. Given this, there are a variety of facts that should perhaps be considered in this decision making process, which include the following:

1. The 2005 Town of Carolina Beach Vision Statement

“The Town of Carolina Beach, its citizens, property owners, and business owners, hereby strive to safeguard the standards for living, work and recreation that have made Carolina Beach a preferred residential and vacationing community. The Town shall seek to promote a family-oriented residential community with entertainment, recreation and commercial services geared toward both the town’s permanent and vacationing families. Shopping and dining at the Boardwalk, enjoying the entertainment area, and relaxing at the public beaches, waters, parks, or marinas are all activities to be preserved and enhanced in Carolina Beach. The Town recognizes the protection of its environmental and natural characteristics as being crucial in maintaining residents’ enjoyment of their surroundings and quality of life. Sustaining economic growth from tourism and recreation is also a Town goal relying on a healthy and preserved ecosystem. Therefore, the duty of the Town of Carolina Beach shall be to manage and encourage sustainable growth through its policies and regulations in the pursuit of a safe, healthy and small-scale family community.”

2. Height of Existing High Rise Structures in Town: (except for the Marriott these are approximate building heights)

The Marriott – 136 feet

Pelican Watch – 120 feet

Harbor Oaks – 120 feet plus appurtenances (cell tower)

Atlantic Towers – 110 feet

Golden Sands – 75 feet

3. C-2 Land Area in Acres as shown on the Future Land Use and Classification Map along with the Map: See Exhibit 2 for the Map

Total C-2 acreage is 39.12

Total CBD acreage is 58.40

4. Master Development Plan Proposed Regulations (page 36). Below are recommended revisions to the zoning ordinance in addition to the implementation plan as outlined by Peter J. Smith

“Require a building height restriction of +/- 130 feet on the buildings fronting Canal Drive (parallel to the beach) to minimize summer shadow impacts as shown in figure 9,” which is the Shadow Study Illustration (Extent Shadows on September 1<sup>st</sup> at 4:00 p.m.)

“Require buildings to step down from setback buildings as outlined in the Plan.”

“Require the preparation of shadow impact studies for all future development over 50 feet.”

Below is the insert found in the MDP that illustrates the shadow effect on September 1<sup>st</sup> and which shows the “Branded Hotel” shadow at a presumed height of 115 feet. The MDP also suggests limiting the height of buildings to minimize shadow impacts. The figure below illustrates the shadow impact on September 1 at 4 p.m. Taller buildings can possibly shade out areas of the beach.



## **ADVERTISEMENTS AND NOTIFICATIONS**

### NEWSPAPER ADVERTISEMENTS

1. Island Gazette on July 23, 2008 – This ad contained: (1) a general description of the amendment; and (2) locations where the amendment could be viewed.
2. Island Gazette on July 30, 2008; August 06, 2008; August 13, 2008; and August 20, 2008 – an increase level of detail is provided in this ad that shows: (1) the specific language recommended for approval; (2) additional locations where the ad may be viewed; and (3) information on how to provide written comments to the Division of Coastal Management.
3. Star News on July 26, 2008 – same ad as described in #2.

### PUBLIC NOTIFICATIONS

1. On July 23, 2008 information on the amendment was posted in the following locations: (1) Town Hall; (2) New Hanover County Courthouse (Office of the Wilmington/Cape Fear Coast Convention and Visitors Bureau; (3) Katie B. Hines Senior Center; (4) Carolina Beach Library; (5) Carolina Beach Parks and Recreation Center

### DIVISION OF COASTAL MANAGEMENT NOTIFICATIONS

A copy of the notification was provided to Mike Christenbury on July 23, 2008.

If the Town agrees to amend the 2007 Land Use Plan on August 22, 2008, then the amendment will be emailed to Mike Christenbury on the evening of August 22 in order to be heard at the September 24-26 CRC meeting.

### **RECOMMENDATION**

#### PROS:

- The Master Development Plan supports this amendment with suggested heights +/- 130 feet.
- Currently, there is no building cap outside AEC's, therefore, zoning outside AEC's would support this.
- The Hilton's requests will add economic viability to our CBD.

#### CONS:

- It is a change against the final decisions made during the planning process that went into the 2007 Land Use Plan adoption.
- This is another incremental increase in the building height cap without addressing the issue as a whole.

In conclusion and because this is a value driven issue, Staff is not proposing a technical recommendation for your consideration. We are of the opinion that this decision is best suited to those who recommend and decide on the future look of what we want our Town to become.

### **Planning and Zoning Commission Recommendation**

On August 14, 2008 the Planning and Zoning Commission was scheduled to hear both the Land Use Plan amendment as well as two zoning amendments and to advance their recommendation on each to Town Council. Due to an advertising oversight by the Island Gazette, the ad for August 6, 2008 was not run which invalidated the zoning text amendment public notice requirements specified in Section 21 2(e)(4) of the zoning ordinance. This prevented the Planning and Zoning Commission from hearing this request on the two proposed zoning amendments. These amendments will be addressed at a Special P&Z meeting scheduled for September 4, 2008 at 7:00pm in the Town Council Chambers.

Concerning their recommendations for the Land Use Plan amendment, the Planning and Zoning Commission voted not to advance a recommendation because of the omitted public notice advertisement. It should be noted that according to GS 113A-110 which is referenced in the CAMA Land Use Plan Review and CRC Certification requirements only the body charged with adoption or subsequent amendment shall hold a public hearing on the issue and therefore no required P&Z recommendation is necessary or required.