

***MINUTES OF THE RECESSED MEETING
OF JUNE 10, 2008 OF THE TOWN COUNCIL
TOWN OF CAROLINA BEACH***

June 30, 2008

The Town Council of the Town of Carolina Beach reconvened on June 30, 2008 at 7:30 p.m. in the Council Chambers at the Municipal Administration Building, 1121 N. Lake Park Blvd., Carolina Beach, North Carolina. The following were present: Mayor Joel Macon; Mayor Pro Tem (MPT) Dan Wilcox; Councilwoman Pat Efir; Councilman Jerry Johnson; and Councilman Alan Gilbert. Also present were Town Manager, Tim Owens, and Town Clerk, Lynn Prusa.

Mayor Macon called the meeting to order.

CONSIDER AMENDING THE ZONING ORDINANCE TO ALLOW RESTAURANTS PERMITTED BY RIGHT

The Planning Director, Gary Ferguson, presented this item. The Town of Carolina Beach is requesting to amend the definition of “standard restaurants” to be permitted by right in all commercial zoning districts that currently require them as conditional uses (MX, HB, CBD, MB-1, NB, T-1 and I-1).

With the proposal to allow standard restaurants as a permitted use in all commercial zoning districts that currently allow them as conditional uses and coupled with the new definitions cited above that distinguish various types of eating establishments, staff recommended approval of these amendments as they further the goals of the 2007 Land Use Plan and it is entirely consistent with the plan; eliminates existing and unnecessary barriers to promote commercial enterprises town-wide; and promotes revitalization of our CBD and economic investment in all Carolina Beach commercial zones.

The Planning and Zoning Commission recommended adopting the changes that staff recommended relative to restaurants. They also recommended that the original definition of ABC for restaurants included a seating minimum of 36 seats but because Carolina Beach has some restaurants that are less than 36 seats, P&Z recommended that the 36 seat requirement be deleted; recommended that the Town Code of Ordinances and the Zoning Ordinance be made consistent with the definitions of restaurants and bars and taverns; recommended adopting a new definition of ice cream shop. P&Z did not support the new definition of coffee shop because they believed the on-site sales of beer and wine could easily become the principle use and requested staff to bring back new language to address this deficiency. Mr. Ferguson said he would be more than happy to hear from the public or Council on how they feel staff should investigate or look at the definition or allowance for coffee shops and what conditions or how the town might regulate it better than what staff has recommended to P&Z.

Summary of request:

1. Make standard restaurants permitted uses in all commercial zoning districts that now allow them as conditional uses.
2. Adopt a new definition of a restaurant that is similar to the ABC definition of a restaurant.
3. Make the restaurant definition in the Zoning Ordinance the same as the Town Code definition.
4. Adopt a new definition of an ice cream shop.
5. Make the bar/tavern definition the same in the Town Code as the Zoning Ordinance.

After discussion by Council, MPT Wilcox made a motion to open the public hearing. MOTION CARRIED UNANIMOUSLY.

David Cole, the owner of a new local restaurant, said he is in the process of trying to open a bar/grill called "The Dive". He is here for the conditional use permit hearing scheduled for tonight. They are opening up the middle part of the unit from retail over to adding a bar and more seating in the old Gyro's restaurant. Mr. Cole said he has lived in Carolina Beach for over 12 years and he wants to see more and more businesses come here so people have an opportunity to go out with their families. There has been nothing to do here for the last few years. If you don't want a restaurant that serves alcoholic beverages, that's Hardee's or McDonalds. The only way you are going to make it here is to have alcohol or entertainment. If it is downtown Carolina Beach, people are walking around, they are crazy wanting something to do here. They're here on vacation and they walk around in a circle. He doesn't understand why they even come back here unless it is just to lay out on the beach. It needs to be an easier process. The county already gives you a hard enough time, and it costs you enough money. Mr. Cole said that he is going bankrupt, has spent every dollar he has and is paying for every bill himself. And if you want to throw in more fees about parking, he doesn't think there is a problem down there with parking. He has never found a problem parking down there anywhere, at any time. Once you get more and more businesses down here there might be a problem but he doesn't see a problem right now. Some of it is important, the ALE and the ABC Board, those rules are pretty strong. A coffee shop is different than an ice cream parlor. He doesn't think you can get the ABC, you might get a beer and wine permit.

There being no further comments from the public, **MPT Wilcox made a motion to close the public hearing. MOTION CARRIED UNANIMOUSLY.**

Mayor Macon made a motion to continue this item for staff to have more time to work on it.

MPT Wilcox asked if staff needed direction. Mr. Ferguson said he thought he had enough. Council wants ALE added to the definition of restaurant; areas defined relative

to beer and wine sales at places such as coffee shops if they are going to use the concept of entertainment to maybe define better entertainment areas; whether a restaurant is a restaurant if it doesn't have indoor or outdoor seating and return to P&Z for recommendations.

MOTION CARRIED UNANIMOUSLY.

CONSIDER A CONDITIONAL USE PERMIT REQUEST FOR A 99 SEAT RESTAURANT LOCATED AT 6B AND 6C N. LAKE PARK BLVD.

Ed Parvin, David Cole and Charles Calhoun were sworn in.

Ed Parvin made presentation of request for a conditional use permit (CUP) by Diver Down, Inc. to redevelop a portion of the existing 3,430 sq. ft. structure at 6B and 6C N. Lake Park Blvd. to accommodate a 99 seat restaurant (former location of Gyro's and Island Colors). Also they are asking for a waiver of 12 additional, required parking spaces based on previous parking requirements of the two former businesses - Dawn's Café and Island Colors.

The Technical Review Committee reviewed the proposal at its May 19, 2008 meeting and recommended the project to be submitted to the P&Z with three comments:

1. The Gyro's Place was only in one unit, and the previous restaurant did not have a CUP covering the expansion.
2. Provide approval from the Health Department.
3. Expand privilege license.

Staff recommends approval of the CUP with nine conditions:

Operations

1. Refuse collection agency that will be used must be included on final site plan. Before the issuance of a building permit, a letter of approval from the refuse collection agency stating the waste removal plan is adequate for this site.
2. Lighting
 - a. Outdoor artificial lighting fixtures shall be designed and positioned so that the point source of light or any reflective surface from a light fixture is not directly visible from adjacent properties.
 - b. All types of wall pack fixtures mounted on a vertical structure shall be full cutoff or fully shielded.

- c. Outdoor fixtures mounted on a building structure are considered appropriately designed if they are completely shielded down light only fixtures or are recessed fixtures having low wattage (I.e. 50 watts or less) “bug” type bulbs and non-reflective interior surfaces. Other fixtures that have appropriate shields, louvers, or full-cutoff features may also be used if they are in compliance with subsections (1)(a), (b) and (c) above.
3. No structure or equipment of any description shall be erected or otherwise located outside the proposed footprint. All setbacks shall be maintained as presented. Any modifications to this proposal (as deemed significant by the Director of Planning or his designee) will require new application for conditional use permit.
4. All improvements shall be done in accordance with the flood damage prevention ordinance.
5. Businesses within the CBD currently have a total of 663 public parking spaces allocated to them by the town. By subtracting the total number of spaces available (584) from the number allocated (667), it appears that the town is currently overcommitted on parking by 83 spaces. The total number of public parking spaces allocated to this use is 33 parking spaces. If these 33 parking spaces are waived by Town Council, the total of overcommitted parking in the CBD will be 116 spaces. The owner must sign a Town of Carolina Beach Parking waiver acknowledging that public parking will not be exclusively for the use of this restaurant; the availability of public parking cannot be guaranteed and that the town is not liable for any deficiency of public parking spaces.
6. A sign permit must be obtained for any new signs located on the property.
7. Seating shall be limited to 99 seats.
8. Grease trap will have to be approved by the Town of Carolina Beach prior to Certificate of Occupancy for restaurant use.
9. All permits required by Federal, State and Local Agencies, including the Health Department, must be submitted prior to Certificate of Occupancy.

The Planning and Zoning Commission heard this item at their June 12, 2008 meeting and recommended approval with staff recommendations 1-9, Specific Standards 1-7, General Conditions 1-4, the waiver of 12 parking spaces and advised that it is consistent with the Land Use Plan. Mr. Parvin pointed out, under staff recommendations No. 5, which talks about specifically the parking study staff has been working on and how many public parking places are available in the area in the CBD, how many have been allocated and how many will be waived total for this space. It might be better to take that out and put it under background history and take item No. 4 from the background/history and use that as condition No. 5 under staff recommendations.

Mayor Macon made a motion to open the public hearing. MOTION CARRIED UNANIMOUSLY.

Charles Calhoun, attorney representing applicant, 1009 N. Lake Park Blvd. He said

David Cole wanted to put in a better restaurant. He talked about the history of Carolina Beach, his father used to own the Harbor Master Restaurant, said the town needs people like Mr. Cole who want to invest in businesses. He said they started with the Technical Review Committee with a minor CUP, a minor change. That turned into major change by recommendation of staff which put them in front of the Planning and Zoning Commission. They did recommend for them to be passed through a CUP, possibly the permitted use would be before them and might be a moot issue, but it is not at this point. Mr. Cole started by trying to get all his permits in place and that is when the ALE came to him and said, "Mr. Cole you need 36 seats in order to be a restaurant in the eyes of the ALE and the ABC Commission." When that happened they looked at what conditional use permit Mr. Cole did have. He acquired the property next to him and asked if he could put a doorway in there, get the seats that he needs to be a restaurant and get up and running. He had already made an investment and was moving forward. We all take risks whenever we have a small business and try and make something happen and we don't have deep pockets. This is some of the frustration, some of the things we go through at this point trying to open a business in Carolina Beach and a restaurant in the CBD. That is what brings them here today. They are requesting a CUP on a major modification that has been recommended by Planning and Zoning Commission and they also request the parking waiver that staff has presented as well.

Councilman Gilbert asked what the hours of operation would be. Mr. Cole said from 11:00 a.m. until around 2:00 p.m. – lunch and dinner. The kitchen will not be open all the time. Mr. Calhoun said the drawing might be the plan that they had before the fire chief had a chance to meet with staff and that might be why you have what you have with the seating. Mr. Cole said he did not know how many more seats he might want but did not want to have to come back before Council.

Mayor Macon asked if there were any more questions for the applicant or if anyone else wished to speak on this matter.

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

MPT Wilcox made a motion that based on the fact that he hasn't heard any testimony this evening to suggest that this project doesn't meet staff recommendations 1-9 with item 5 on page 4 being replaced by item 4 on page 3, to read as follows:

Condition #5 – Parking for restaurants is calculated as one (1) parking space per 3 seats. The applicant proposes 99 seats which requires 33 parking spaces. Parking for Dawn's at 46 seats required 15 parking spaces. Parking for Island Colors at 1,125 sq. ft. required 5.6 or 6 parking spaces. Thus, the previous uses would require 21 parking spaces compared to 33 for the proposed restaurant. Diver Down, Inc. is requesting a waiver for the additional 12 parking spaces as required by 7.1 (c) *Waiver of Parking Requirements in Central Business District*. This ordinance states, "Where

properties are located within the CBD, parking requirements may be waived if public parking spaces adequate to meet the requirement are located within 500 feet of the use. The requested spaces must be recommended for approval or denial by the Planning and Zoning Commission and must be approved by Town Council.”

Where buildings are located within the CBD, off-street loading requirements may be waived based on approval of a loading plan. Loading plans submitted by applicants shall address the following:

- (a) **Time loading will take place**
Loading normally occurs at approximately 12 p.m.
- (b) **Approximate size of truck used for loading**
The same truck utilized surrounding restaurants will be delivering to “The Dive.”
- (c) **Duration of loading period, and**
Loading for each restaurant takes approximately 15 minutes.
- (d) **Location of the loading area**
The designated space for loading/unloading on Raleigh Avenue will continue to be utilized for this business,

Specific Standards 1-7 and General Conditions 1-4, that the applicant be issued a waiver of 12 parking spaces and finds that the project is consistent with Land Use Plan. Councilman Gilbert and Mayor Macon said they had received some feedback regarding the mannequin in the window. Some people found that offensive and not apropos to a family restaurant. **MOTION CARRIED 4-1 WITH COUNCILMAN JOHNSON VOTING NO.**

NON-AGENDA ITEMS

Tim Owens said they would like to apply for a storm water grant, basically a water resources grant. Council has a copy of the resolution that needs to be submitted with the grant application which will go in shortly. It is a little bit different approach than the last time they applied for it. This is for two storm water bonds and it is a matching grant. The highest the water resources will go is \$400,000 so that is what they are asking them for, our match being \$1.4 million. He is requesting Council to adopt a resolution so they can submit the application. He has already submitted the application with the old resolution and would like to go ahead and forward this to John Sutherland as soon as possible. It doesn't mean they won't ask for Phase 2 which is the lake part of it and they may ask for that in appropriation later this year.

Councilman Gilbert made a motion to approve Resolution No. 08-922 (Exhibit 1) sponsoring the Carolina Beach storm water project. MOTION CARRIED UNANIMOUSLY.

MPT Wilcox asked staff if they had a list of licensed uses for restaurants using alcoholic mixed beverages, not beer and wine. Staff said they could obtain that.

Tim Owens said the Hilton Garden Inn is moving along with its construction and one of the things they need is a decision on a traffic issue. There are two scenarios for traffic. He has relayed this to the police department and shared it with the Wilmington MPO, and staff has looked at it. He showed the first scenario. They can construct this scenario which gives three lanes - Harper, new alignment for Carolina Beach Avenue North. The benefits of this are there is a stacking lane for two cars and movement can go a little more freely down CBAN heading north but there is some concern by MPO about the speed at which you can turn the corner. Currently all the pavement is in place and trying to get the curb and gutter in. The negative side to this development is that there are a lot of people flowing across three lanes of traffic. The positive is that you can be a little more free flowing. Mr. Maynard is talking about putting utilities underground but if he does not there will be several power poles. The second scenario is a little more favorable in his opinion on several counts. It lines up well with the southern part of Canal Drive. One thing that would have to happen if this is approved is that this will probably have to become a curb and gutter situation or some other kind of line situation. In the future you could always come back with a right turn only here if you wanted to or you could use it for parallel parking or green space. This movement is deliberate; speeds will be slower coming around the curve. You still have space in the event that you need to come up with stacking in the other scenario but if you go overhead with power, power poles would be here which would be a little more favorable. These are the two scenarios. They really need to get going. He did talk with Anthony Prince with the MPO and he liked the second scenario better because of the traffic circulation and he also had concerns about speed coming around the corner. A traffic engineer has not looked at it. Hilton would like to begin construction tomorrow for curb and gutter. Mr. Owens told them he could not guarantee a decision that quickly. After discussion with Council it was decided to request a hybrid of the two scenarios. The town manager said he will call Wilbur Smith tomorrow and ask him to look at it.

Councilman Gilbert gave an update of the MPO meeting. He said that Kure Beach mailed their resolution to Mike Kozlosky which states their position on Dow Road. Councilman Gilbert wants to reaffirm that this has been on the Transportation Improvement Plan (TIP) since early 1980 and that the scope has been known by the various board members here and the MPO wanted to know if there would be any surprises from Carolina Beach. He asked that Council review Kure Beach's concerns. He feels that if this is removed from the TIP, it will not come back probably for 20-25 years down the road. We need to make sure if this is something we want to happen at a minimum, with respect to maybe some widening and a turn lane or a bike path from Ocean Blvd. to Harper Avenue - his concern is that they keep it on the TIP because it has

taken so long to come to this point. He is concerned that with Kure Beach's position that it may go away completely. Councilman Gilbert said we need a resolution that we are in support of the project and go forward with the study. The town manager said if you need something soon, Council could authorize the Mayor to write a letter and send it forward. Councilman Gilbert said, with regard to 421, he feels they should look for local legislation that will allow the town to implement an ordinance that cars have to yield to pedestrians and allows them to paint stripes across 421. Ocean City has very successfully solved that problem with signage and striping. He requested that the town manager and Mayor draft a letter and cite Kure Beach's concerns and request they address those in the study and also send something to Kure Beach.

Mayor Macon said he has been talking to some people about doing a reception/presentation for the Boardwalk Makeover crowd and asked if that was something Council would entertain. Council agreed to do a thank you at the end of the season in the atrium.

Mayor Macon said it was brought to his attention that on the strand people are leaving their chairs, umbrellas, etc. staked out on the beach for the whole weekend. Councilman Gilbert said people were leaving 12x12 pop-ups at Ocean Isle and the wind was blowing them around causing damage. Ocean Isle now bans them. Mayor Macon said you have to remove your stuff off of the beach at night. The town manager said he doesn't know that it is a huge problem but he will look into it first thing in the morning and talk with the police chief. He doesn't mind bringing back an ordinance if they think it is an issue.

There being no further business, **Councilwoman Efird made a motion to adjourn.**
MOTION CARRIED UNANIMOUSLY.

Respectfully submitted,

Lynn N. Prusa
Town Clerk

Approved: _____