

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
1121 N. Lake Park Boulevard
Carolina Beach, North Carolina 28428
910 458 2978
FAX 910 458 2997

Planning & Zoning Commission Minutes

March 13, 2008

7:00 P.M.

ITEM #1 Call to Order & Roll Call 7:01pm

Chairwoman McQuillen calls the meeting to order.

Commissioners Present: 6

Sarah Efird
Betsy McQuillen
Jim Miller
Jim Rees
Greg Reynolds
Shawn Underwood

Commissioners Absent: 1

Bill Parker

Staff Present: Gary Ferguson – Planning Director, Ed Parvin – Senior Planner, Jeremy Hardison – Zoning Administrator, and Karen C. Middleton – Secretary

ITEM #2 Approval of the Minutes 7:02pm

None presented

Motion for Agenda Amendment

Mr. Underwood moves to shift Item #3 on the agenda to later in the meeting as the applicant will not be able to arrive until after 8pm. Mr. Rees seconds. All ayes. **Motion carries unanimously (6 to 0).**

ITEM #4 Public Hearing: Consider Amending the Zoning Map to Rezone:

- A) Properties located behind the lots immediately adjacent to Virginia Ave rezoned from Conservation to R-1B
 - B) Properties located at the north end of Carolina Beach and on the west side of Canal Drive rezoned from Conservation to R-1B to correspond with the existing rear lot lines and to eliminate the split zoning of said parcels
 - C) A portion of the 47 acre tract owned by the Town of Carolina Beach rezoned from R-1B to Conservation with said rezoning occurring directly behind and adjacent to the lots on the east side of Oceana Drive **7:03pm**
-

Mr. Ferguson presents his memo

REQUEST

The Town of Carolina Beach is initiating zoning map amendments to specifically do the following:

1. To rezone 5.21 acres from the Natural Resource Conservation District (C) to R1-B Residential District, and;
2. To rezone 3.86 acres from R1-B to Conservation (C)

In total there are 20 lots affected by this rezoning. Of those 20 lots 9 are currently vacant and 11 lots are developed. Including these developed lots there are 108 dwelling units affected which includes all of the units in the Breakers Condominium project (77 units) as well as the Seawind Condominium project (25 units). The remaining six (6) units are single family.

The majority of this property is located in the VE-14 Special Flood Hazard Area as identified by FEMA under the National Flood Insurance Program. In addition, the northern most portion of the property on Canal Drive (the Breakers) is in the CAMA Area of Environmental Concern (AEC).

PURPOSE OF THIS REQUEST

As mentioned earlier this is a Town sponsored rezoning to address two issues. First, the property owners at the Breakers have serious concerns with their properties being designated “non-conforming” as a result of the zoning changes they believed occurred without their knowledge or consent. They want their properties brought back to the way they believed they were zoned which is R1-B.

Secondly, some property owners fronting on Virginia Avenue also alleged that they were rezoned without their knowledge or consent and have entered into a lawsuit against the Town to rezone their properties back to the previous designation which was R1-B. On February 26, 2008 a mediation to resolve this lawsuit was conducted and it was agreed that the Town would attempt to rezone their properties to R1-B.

DEVELOPEMNT CONCERNS AS A RESULT OF REZONING

Several questions have been raised concerning development opportunities if these properties are rezoned. Some of these questions include the following:

1. Can duplexes and PUDs be constructed in the R1-B zone?

According to the current zoning ordinance neither duplexes nor PUDs can be developed in the R1-B zone.

2. What are the differences between the R1-B and Conservation zone relative to the allowance for uses?

The following uses are authorized in the R1-B zone but not in the Conservation zone:

- Convents
- Day nurseries, day care centers and pre-schools
- Dormitories and fraternity/sorority houses
- Churches/places of worship/parish houses
- Fire stations, emergency services, non-profits
- Gardens, arboretums, and greenhouses, no items for sale
- Meeting facilities, fraternal and/or civic
- Parks, playgrounds and recreation buildings, public
- Schools, public
- Tennis courts

3. Can the wetlands adjacent to these properties be filled?

Regardless of the zoning designation property owners can apply to the Army Corp of Engineers (COE) for a fill permit. According to our 2007 Land Use Plan and particularly policy number 82 the Town values the protection of “404” wetlands and does not want to see this natural resource destroyed for either public or private development activity. There is however, a “one to one” mitigation allowance or a “no net loss” of these wetlands in this policy.

4. Is this rezoning consistent with the 2007 Land Use plan?

In general this rezoning is in conformance with the current Town Land Use Plan. Specifically policies #23 which speaks to encouraging moderate density single family lots; policy #25 which addresses not permitting high density or intense multifamily development in the Residential 1-4; and policy #35 which speaks to the long term viability of our

natural and scenic resources and does not diminish the quality of life or environment of the Town. Given this there are policies that address Scenic Vistas and Views (policies #58 and #59) which may be impacted on those properties fronting on Virginia Avenue. This impact may still occur if these are legal lots of record and fill authorization is granted by the COE.

5. If these properties are rezoned will this action eliminate the non-conforming status of the Breakers?

Regardless of whether the property is zoned R1-B or Conservation the Breakers will remain non-conforming and subject to the non-conforming language of our zoning ordinance.

RECOMMENDATION

Staff recommends approval of this rezoning for the following reasons:

1. This action is in general conformity with 2007 Town Land Use Plan
2. If approved it gives back what many property owners thought that were already zoned.
3. According to the current zoning ordinance the highest intensity residential use in the R1-B zone is single family homes which is the principle land use value of the Town

Commission Questions

Mr. Underwood asks how this property became Conservation to begin with, as there seems to be no documentation of a rezoning having taken place. Mr. Ferguson says he would like to visit that issue, but what everyone is there to do this evening is to correct a problem that has been plaguing the town for a couple of years. Ms. McQuillen asks how long ago this happened; Mr. Ferguson answers it was in 2000. Ms. McQuillen reiterates that the task at hand is to straighten out the zoning map, not to determine what people want to do with their property. Mr. Ferguson explains that the difference between Conservation and R-1B regarding use is not that significant; the density of activity on the lots will not increase in R-1B. Ms. McQuillen asks for confirmation that this is an initiation from the Town of Carolina Beach; Mr. Ferguson confirms. Ms. Efird asks if the people who own property at the Breakers came to the Town; Mr. Ferguson says yes, and that they gave a presentation to Town Council recently wishing them to correct this wrong. Ms. McQuillen asks if they requested the R-1B; Mr. Ferguson answers yes. Mr. Rees notes that the R-1B still leaves them as non-conforming, unable to rebuild if they tore the structure down themselves.

Public Hearing

Ms. Efird moves to open public hearing. Mr. Rees seconds. All ayes.

In Favor

Frank McLauren, Breakers Unit B-10 – speaking on behalf of the Board of Directors. While the zoning issues do not have much impact on them, other issues affect them greatly – such as those with lenders and insurance companies. Local realtors have expressed hesitancy when asked to list properties at the Breakers because of the unsettled split zoning. They have yet found anyone who can show them where the map amendment was advertised, published, or voted on with action to carry this to this point. He bought his property off the map that was posted at Town Hall, and the split zoning map appeared about 18 months ago. He asks the Commission to carry on a recommendation to restore their zoning. Mr. Ferguson clarifies something he said in his presentation – if the Breakers were voluntarily torn down, they could rebuild back to the exact same density they have now. However, they would still have to meet the setbacks and flood regulations. Jane Weissbeck, 118 Georgia Ave – has concerns about how this will affect the rest of the neighborhood. The properties along the marsh behind Virginia Ave are subject to tidal flooding, and she also does not understand how the lots would be accessed. She opposes the lots being developed. Mr. Ferguson says that when someone buys a lot in Carolina Beach, there is an expectation that a building permit can be secured for the land. They are legal lots of record, and if they are not, the owner should ask the seller for his money back. However, he understands the flooding and access concerns. Diane Dugan, owns three properties on the north end, one on Virginia Ave - Before the two houses were built behind Virginia Ave, she did not have flooding. After they were built she has had consistent flooding, which creates mosquito problems. Mr. Ferguson clarifies that Conservation does not mean unbuildable; rather, a single-family building permit can be secured for those lots under Conservation and R-1B. The footprint under Conservation would have to be smaller. Mr. Underwood says this is simply a legal issue for the town. Shirley Jones Manning, 404 Oceana – During the last hurricane there was no flooding. The two houses were built, and then there was a foot and a half of water. She has concerns about the conservation area, the salt marsh – it protects the whole north end of Carolina Beach.

Craig Weinger, 202 Virginia Ave – built the two houses spoken about by the last few people. Does not believe a proper rezoning ever took place. The flooding has nothing to do with the two houses he built. Oceana was allowed to be built without a storm water plan, and their stormwater was running across his two properties.

Leland Dixon, 1715 Canal Drive, Member of the Board of Directors for Seawinds – appreciates the town’s effort to remove the split-zoning classification; however, condominiums do not fall into the single-family category of R-1B; Mr. Ferguson says they will be R-1B, but that Seawinds and Breakers can rebuild under the non-conforming section of the Zoning Ordinance. Mr. Dixon says the Breakers does not trust the system.

Steve McGough, Seawinds B-7 – Asks if Seawinds was originally built under R-1B; Mr. Ferguson says it was built under R-A6, which no longer exists.

Jack Buchanan, 220 Florida Ave – Asks if there is a deed of record of the lots behind Virginia Ave; Mr. Ferguson answers that town staff has not investigated all lots to determine whether they are legal lots of record. Mr. Buchanan thinks this should be done prior to rezoning them. Mr. Underwood says the town is trying to undo something that was not done legally, not just rezone.

Robbie Johnson, 209 Virginia Ave – thinks it is a good idea for those who currently own the lots behind Virginia Ave to sell them back to the sellers. Florida Ave back in 1969 seldom flooded. When the areas across the street were bulkheaded, his house began to flood. He further discusses the flooding issues on Virginia Ave and the area. He asks the town to protect the people who live there, not those who just want to gain monetarily.

Terri Hamm, 111 Virginia Ave – shows pictures to the Commission of what happens in the Virginia Ave area when it floods. The three areas being rezoned are not in the same category and should be treated separately.

Paul Powell, Seawinds Board of Directors – Has concerns over whether “non-conformity” is a legal term that would allow them to rebuild back to the density and standards they have now. Mr. Ferguson says the non-conforming section of the Town’s ordinance is very forgiving, and Carolina Beach has a strong value of not taking away people’s property rights.

Bryan Keller, 407 Oceana – Asks the Town to take into consideration the proposed Master Plan; he thinks the lots behind Virginia Ave contradict the Master Plan.

Steve McGough, Seawinds B-7 – Seawinds would like to be zoned multi-family for the pre-existing structures. Mr. Ferguson explains that spot-zoning is illegal in North Carolina, and it is the non-conforming section of the ordinance that applies to them.

Sandy McKeethan, 116 Virginia Ave – Has owned her property since 1982, and her family has been coming to Carolina Beach for over 70 years. Some of the issues raised this evening do not address what this panel is here to do. The Commission is here to make a recommendation on a rezoning. She provides a history of the lots behind Virginia Ave. With regards to the rezoning, the owners of those lots can build in both Conservation and R-1B. The property owners here are willing to work with the Town and CAMA to work out the water problems.

Lee Bunch, 110 Virginia Ave – Asks if the Town has a question about whether the owners of the lots behind Virginia Ave have a deed; Mr. Ferguson says there can be a deed to a property, but whether there is a question as to whether or not that deed was created properly. Tonight we are trying to correct a zoning map that a former Planning & Zoning Commission Chairman hand drew and signed. This problem has created a lot of conflict in the Virginia Ave area, and has created much unpleasantness amongst neighbors.

Jeannie Mintz, 205 Georgia Ave – This area floods terribly. The wildlife needs a home, and the only place they can go is the acreage behind the marsh. This has been a terrible mix-up, and once those lots behind Virginia Ave are filled, the wildlife is gone.

Lee Bunch 110 Virginia Ave – The Town is not losing any conservation area; the Town is giving up some of their land in the R-1B and switching it to Conservation, too.

Rex Creech, 204 Virginia Ave – asks if the Town is trading their land; Mr. Ferguson explains that the Town is taking it from R-1B to Conservation. Mr. Creech opposes development on the lots behind Virginia Ave, and says if he gets water in his house then the Town will see him again.

Sonya Bennett, 202 and 200 Virginia Ave – Everybody’s view is free. The lot at 200 Virginia Ave floods often and she would not build on it because of the flooding. She never intends to sell it or put an easement on it either. The wildlife needs to be protected.

Robbie Johnson – in rebuttal to Mr. Bunch’s comment, the people are not gaining the town’s land (going from R-1B to Conservation); rather, they are losing the land behind Virginia Ave (going from Conservation to R-1B).

Mr. Miller moves to close public hearing. Mr. Rees seconds. All ayes.

Public Hearing Closed

Commission Discussion

Ms. Efird thinks this should be postponed a month, because not all three issues are the same. Mr. Miller asks staff to comment on this. Mr. Ferguson explains that there is a connotation that implies development cannot occur when land is zoned Conservation. That is untrue. CAMA is not involved in this; rather, it is the Army Corps of Engineers. DCM has no issue with this, except at the Breakers, and that is only because it is on the very north end. Tonight, there is simply a rezoning of a piece of property from one zone to another. It does not make the property any more or any less buildable. If your lots were created correctly, your lot can be afforded a building permit. Mr. Miller says the rezoning will not change whether or not the lots can be built on. Mr. Underwood says this is an emotional issue for the people here, but this is a legal issue for the Town because the map is wrong and it was adopted incorrectly. The Commission is trying to address and correct that legal issue. Mr. Reynolds sees both sides to this, but this is a legal issue. He asks for clarification about the minimum lot size; Mr. Ferguson explains that, for example, if you have a 3,000sf lot and the minimum lot size is 5,000sf and the lot was legally created, then yes, you can secure a building permit as long as you can meet the setback and height requirements. He asks about access to the lots behind Virginia Ave; Mr. Ferguson believes there is easement law, with an expectation that an access must be provided from the parent parcel to the subordinate parcel. Further, if the lots were legally created, then there should be access easements provided to them. Mr. Rees feels that the people here have a large emotional connection to this issue, and does not see the rush in moving this along. He asks that the questions get answered first. Ms. McQuillen says this is a legal issue; she does not believe the town intentionally put the Conservation line there. She provides a brief history of the sale and zoning of the lots. The Commission is not here to determine what these people can do with their lots. She knows the area floods, and she has empathy for everyone there for that. However, the Commission has to rectify the situation; the owners have been paying taxes on their property and they have a right to their property.

Motion

Mr. Underwood moves to recommend amending the zoning map to rezone: (A) Properties located behind the lots immediately adjacent to Virginia Ave rezoned from Conservation to R-1B, (B) Properties located at the north end of Carolina Beach and on the west side of Canal Drive rezoned from Conservation to R-1B to correspond with the existing rear lot lines and to eliminate the split zoning of said parcels, and (C) A portion of the 47 acre tract owned by the Town of Carolina Beach rezoned from R-1B to Conservation with said rezoning occurring directly behind and adjacent to the lots on the east side of Oceana Drive, and that this rezoning is consistent with the Land Use Plan. Mr. Rees asks if the people can do a protest or a petition for a super majority vote at the Council level if this goes forward to Council with a positive recommendation; Mr. Ferguson replies that this is an opportunity that always exists. Mr. Miller seconds. Mr. Underwood, Mr. Reynolds, Ms. McQuillen, and Mr. Miller – aye. Mr. Rees and Ms. Efird – nay. **Motion carries by a 4 to 2 vote.**

-----Recess-----

Motion for an Excusal

Mr. Reynolds moves for the Commission to excuse him from the next hearing as he is the project's architect. Mr. Underwood seconds. All ayes.

ITEM #5

Conditional Use Hearing: Consider a request to modify a Conditional Use Permit for a Restaurant, Black Horn Bar & Kitchen located at 15 Carolina Beach Ave N to expand into 103 Carolina Beach Ave N, the vacant adjacent property to the north in order to provide 140 additional seats in a courtyard setting
Applicant: Paradise Island VII, LLC. **9:07pm**

Jeremy Hardison presents his memo

Major modification of an existing Conditional Use Permit from Paradise Island VII, LLC for the following:

1. Expand the outside seating from 18 seats to 158 seats for a total of 257 seats.
2. Request for a parking waiver from the Town for a total of 86 public spaces (47 additional spaces). Applicant currently has a waiver for 39 parking spaces.
3. Construction of a 200 square foot deck, 360 sq ft roofed bar placed on top of 600 sq ft of decking, and addition of a walk in cooler covered by a shielding shade

BACKGROUND/HISTORY:

There have been several modifications to the original CUP over the past couple of years. The conditional use permit was originally issued on: June 14, 2005. Original Request: to redevelop (1) approximately 6,300 sq. ft. structure from 1 residential unit and an arcade on the ground floor (Mixed Use Development) at 15 Carolina Beach Avenue North;

#1 Modification August 09, 2005: Arcade and restaurant on the ground floor with storage on the second floor;

#2 Modification May 09, 2006: to locate a 7 X 7 walk-in cooler enclosed by an 11 X 17 block building at the rear of the property;

#3 Modification February 13, 2007: Create an entryway out of an existing fire exit to the rear of the building; extend the bar ten (10') into the arcade (south) to accommodate 8 additional seats;

#4 Modification August 14, 2007: Approval of a stage area that has been set up in the southeast corner of the previous arcade area. Allow for additional seating capacity in the existing Black Horn restaurant and expand the restaurant area into the previous arcade area. Expand the outdoor seating in the front (on the boardwalk) to accommodate an additional 6 seats. This will increase the seating capacity from the approved 42 seats to 98 seats 80 inside 18 outside. Approval for a parking waiver from 25 spaces to 33 spaces.

#5 Construction of a 246 rear deck, roof structure and add 19 interior seats for a total of 99 seats inside.

The parcel is located within the 100-year floodplain in a VE Zone. The property is also located within a CAMA Area of Environmental Concern.

ANALYSIS:

Zoning

Height, density, and setbacks, in the Central Business District are examined through Conditional Use Permit review. The current lot is vacant with a proposed access door to the lot from the restaurant area of the current structure. Maximum lot coverage within the Central Business District is 100%; the footprint of the proposed decking is 800 sq ft and proposes to locate a walk in cooler on the south side accessed through the current kitchen. Setbacks in the Central Business District are 0' (side), 0' (front), and 0' (rear). The proposed decking would be 3' off of the north property line and built to the property line on the south side as well as the walk in cooler. The applicant proposes to erect three 25' mass poles located towards the center of lot with a shielding shade attached to them.

Seating

The current approval allows for 117 seats 99 inside and 18 outside. The applicant is requesting 140 additional outside seats for a total of 257 seats

Parking

The applicant received a waiver for 39 spaces required with the CUP. The modification increases the parking requirement to a total of 86 spaces (this parking is based on the 257 seats. The applicant is asking that the additional parking as a result of the modifications be waived. Article 7 of the zoning 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."

Loading Zone

Stormwater

The applicant plans to apply crushed stone and gravel on the lot with drainage going to the street.

Landscaping

Type E: For every fifty (50) linear feet of frontage, or fraction thereof, the street yard shall contain: one (1) under story tree with sidewalks or planters built within the sidewalk. Street yards located within the CBD shall include sidewalks with planting areas either adjacent to the curb or planters located within the sidewalk. In the central business district, sidewalks and tree plantings will be required for all new construction.

Asking for a variance to construct a sidewalk Along Canal Dr.

February TRC recommendations:

Staff In Attendance: Tim Owens – Town Manager, Billy Younginer – Police Chief, Bill Parker – Operations Director, Bob Weeks – Interim Fire Chief, Gary Ferguson – Planning & Development Director, Ed Parvin – Town Planner, Jeremy Hardison – Zoning Administrator, Karen Middleton – Secretary, Adam Short – Research Fellow

Applicant Representatives: Brett Keeler & Greg Reynolds

Fire –

Sun shades must be flame-retardant.

Planning –

Fix the ledge in the men’s bathroom to make ADA compliant,

Address loading plan,

Get owner’s signature on application,

Provide percentage of enclosed versus open air platform,

On site plan draw the flood line, AEC line, and dimensions of rights-of-way,

All signs must be permitted by the Zoning Administrator,

Building Inspector has not reviewed these plans.

Police –

Post signs noting, “No alcohol behind this point” out back to direct people going from courtyard area to the bathroom.

Check ALE rules regarding the carrying of alcoholic beverages from courtyard into enclosed existing restaurant.

Town Manager – None

Operations – None

LAND USE PLAN CONSISTENCY:

The proposal is in general conformity with the Town Land Use Plan.

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. Restaurants are allowed with the approval of a Conditional Use Permit in Central Business District zoned properties. Staff recommends the following conditions if the proposal is to be recommended for approval:

1. All modifications must meet the Carolina Beach flood damage prevention ordinance.
2. Final project shall be designed to provide required number of parking spaces as provided in Article 7 of the Town’s Zoning Ordinance. “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.” If parking requirements are waived the applicant shall sign a parking waiver stating the Town is not liable for any deficiency of public parking spaces. The total number of public parking spaces allocated to this use is 86

- parking 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 and that the availability of public parking can not be guaranteed.
3. Solid waste is handled collectively by the boardwalk area businesses. The owner will be required to continue to participate in this program.
 4. A sign permit shall be obtained for any new signs located on the property.
 5. Seating for the restaurant shall be limited to 257 seats.
 6. The restaurant shall not convert to a private club.
 7. All permits and approval letters required by all Federal, State, and Local Agencies must be submitted prior to Certificate of Occupancy.
 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 Occupancy.
 9. 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.
 10. 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.
 11. The property must remain in conformance with its Conditional Use Permit or project property will be considered for CUP permit revocation as specified in Section 14.11 of the Zoning Code.
 12. Seating, decking and shielding shade must meet Fire Code.
 13. The addition shall meet all ADA requirements.
 14. The current bathroom must meet ADA requirements.
 15. Provide a loading space plan.
 16. A sign stating “No alcohol behind this point” at exit points from the court yard.
 17. Must comply with ALE rules regarding the carrying of alcoholic beverages from courtyard into enclosed existing restaurant.
 18. If the applicant no longer has a valid lease the use and all structures will have to be removed from the property.
 19. Must secure a CAMA permit before any activity is to take place on the lot.
 20. Type E landscaping to be provided.

Commission Questions

Ms. McQuillen asks about the sidewalks; Mr. Hardison explains that there is not much room for a sidewalk on Canal Drive, so the applicant is asking for a waiver. Ms. McQuillen asks if the parking waivers have been signed; Mr. Ferguson answers that a member of Town Council has brought it to staff’s attention that a parking waiver form does exist and staff will now be utilizing this tool. Ms. McQuillen asks about the ALE rules; Mr. Hardison explains that the police chief had concerns over people exiting the back of the courtyard to use the bathroom inside the restaurant with alcohol in hand. Ms. McQuillen asks if the Town would be responsible in any way if the Black Horn moves out of the courtyard and does not clean up; Mr. Ferguson says the owner of the lot at 103 Carolina Beach Ave N would ultimately be responsible for cleaning up.

Applicant

Brett Keeler, 615 Carolina Beach Ave N –Mr. Reynolds hands out copies of a new floor plan to the Commissioners as the floor plan has been rearranged. His CUP modification is a request to expand the Black Horn into 103 Carolina Beach Ave N, for which he has a long-term lease, to ask for 140 additional seats, and a waiver of 47 parking spaces. The parking is not as detrimental as it seems, as a lot of their business is pedestrian. If his lease does break or expire and he does not buy the property, then he does not feel he should have to remove the structures in case there is an agreement between the Black Horn and the property owners. He requests that #18 under Staff Recommendation be stricken. Mr. Keeler further explains the access points and the set-up of the property, and clarifies that the sidewalk waiver is requested so that he does not have to construct a sidewalk, adding that TRC said it was not necessary. He ensures the Commission that everything regarding CAMA and landscaping permits have been taken care of.

Commission Questions

Ms. McQuillen asks about the height of the mast heads; Mr. Keeler ensures that they will not be taller than any of the telephone poles. Mr. Rees has concerns about the lack of a sidewalk in the back; Mr. Keeler says that opening goes directly into the street. Mr. Rees says to leave the space there would be advantageous even if a sidewalk is not poured, adding that the access will be right off the street with no area in the event there is a large crowd.

Public Hearing

Mr. Rees moves to open public hearing. Ms. Efird seconds. All ayes.

No one speaks.

Mr. Rees moves to close public hearing. Mr. Underwood seconds. All ayes.

Public Hearing Closed

Commission Discussion

Mr. Underwood asks if #18 under Staff Recommendations would be an issue between the property owner and the leaser; Mr. Ferguson thinks this would be an issue between those two parties, and it would not be a town issue. Mr. Ferguson asks Mr. Hardison if the town is in possession of a signed lease; Mr. Keeler interjects to say that they have the fax from the property owner giving them permission to move forward. He knows his attorney has drawn up a lease for the property owner and it was hand-delivered, but he has not yet personally seen the lease. Ms. McQuillen asks if staff is also going to require the owner to sign the application; Mr. Ferguson answers that it is a requirement of the ordinance, and it would be appropriate for the Commission to put a condition to require a signed application and signed lease. Mr. Underwood says every beach town he goes to has this type of outdoor environment, and Carolina Beach is lacking in this area.

Motion

Mr. Miller moves to recommend approval of this Conditional Use Permit Modification request with Specific Standards 1-7, General Conditions 1-4, Staff Recommendations 1-20, that they have a signed lease and a signed application, and to advise that this is consistent with the Land Use Plan. Ms. Efird seconds. All ayes. **Motion carries unanimously (5 to 0).**

ITEM #3 **Subdivision Variance Request:** Consider a Variance Request to Sec. 12-106 Lots (b) Arrangement and layout of lots, and (c) Area and dimension, of the Subdivision Minimum Design Standards for property located at 501 Risley Road
Applicant: Harris Barney Ltd, LLC

9:41pm

Mr. Parvin presents his memo

DESCRIPTION OF VARIANCE:

The applicant and is requesting a variance from:

Sec. 12-106. Lots.

(b) *Arrangement and layout of lots:*

(3) Corner lots shall be designed and platted with at least ten (10) feet of extra width over and above the minimum required for the zoning district.

(c) *Area and dimensions:*

(2) Lots shall have a minimum average depth of one hundred (100) feet. Excessive depth in relation to width shall be avoided and a proportion of two (2) to one (1) shall be considered a desirable ratio under normal conditions.

The property zoned R-2 for single family homes on 7,000 square foot lots. The applicant is proposing to subdivide the current parcel into two lots that will be over 7,000 square feet. (See attached site plan & elevation).

Surrounding Uses

North: Vacant lot zoned HB

South: Vacant lot zoned HB

East: Single-family dwelling

West: Commercial use (Marshall Gardens)

STAFF CONCLUSIONS:

1. The property is zoned R-2.
2. There is an existing home on tract 2 of the proposed subdivision.
3. The applicant is proposing to subdivide the lots into two parcels both with dimensions 73.5' X 95.57 square feet.
4. The average depth of both lots if subdivided will be 95.57' < 100'
5. The tract on the corner of Moorefield and Risley will have 3.5' of additional width vs. the required 10'.
6. The applicant cannot subdivide the lot unless a variance is issued.

REQUIRED FINDINGS:

Sec. 12-50. Variances.

(a) *Hardships.* Where the planning and zoning commission finds that extraordinary hardships or particular difficulties may result from strict compliance with this article, it may recommend variances or exceptions to this article so that substantial justice may be done and the public interest secured, provided that such variation or exception shall not have the effect of nullifying the intent and purpose of this article; and further provided that the planning and zoning commission shall not recommend variations or exceptions to the regulations of this article unless it shall make findings based upon the evidence presented to it in each specific case that:

- (1) The granting of the variation will not be detrimental to the public safety, health, or welfare or injurious to other property or improvements in the neighborhood in which the property is located;
- (2) The conditions upon which the request for a variation is based are unique to the property for which the variation is sought, and are not applicable, generally, to other property;
- (3) Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship, as distinguished from a mere inconvenience, to the owner would result if the strict letter of this article is carried out;
- (4) The purpose of the variation is not based exclusively upon a desire to make more money out of the property.

(b) *Conditions.* In recommending variations and exceptions, the planning and zoning commission may require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements of this article.

(c) *Procedure.* A petition for any such variation shall be submitted in writing by the subdivider at the time when the preliminary plat is submitted for the consideration of the planning and zoning commission. The petition shall state fully the grounds for the applications and all the facts relied upon by the petitioner.

(d) *Planning and zoning commission action.* The planning and zoning commission shall review the petition for variations at the same time it reviews the submitted preliminary plat as provided in section 12-76 herein. Such variations and exceptions approved by the commission shall be recorded in said official meeting minutes.

Sec. 12-76. Same--Planning and zoning commission review; approval.

(a) The planning and zoning commission shall review and take final action on each preliminary plat within forty-five (45) days after first consideration by the planning and zoning commission. First consideration shall be at the next regularly scheduled meeting of the planning and zoning commission after the plat has been submitted to the administrator.

(b) Upon completion of the preliminary plat review, the planning and zoning commission shall approve, approve conditionally, or disapprove the plat:

(1) *Approval.* If the plat is approved, approval shall be noted on at least three (3) copies of the plat by the administration. Two (2) copies shall remain within the town's files and one copy shall be transmitted to the developer.

(2) *Conditional approval.* In the case of conditional approval, the reasons for conditional approval and the conditions to be met shall be specified in the meeting minutes. One copy of said minutes shall be retained in town files with a copy of the plat and one copy shall be transmitted to the developer. The planning and zoning commission may require the developer to submit a revised preliminary plat with all recommended changes made before approving the plat with all recommended changes made before approving the plat following the same requirements as specified for the initially submitted plat as related to quantity, time frame, and content.

(3) *Disapproval.* When a preliminary plat is disapproved, the planning and zoning commission shall specify the reasons for such actions and such reasons shall be specified in the meeting minutes. One copy of said minutes shall be retained in town files with a copy of the plat and one copy shall be transmitted to the developer.

(c) The developer shall submit one original drawing for the final plat suitable for recording in New Hanover County Registry of Deeds and ten (10) copies to the administration not less than thirty (30) days prior to the town council meeting at which it is to be presented for review and approval; further, the plat shall be submitted within twelve (12) months from the date of preliminary plat approval by the planning and zoning commission; otherwise, such approval shall be null and

void unless an extension of time is granted by the planning and zoning commission prior to the twelve-month time limitation.

Sec. 12-77. Same--Town council review; approval.

Commission Questions

Ms. McQuillen understands that this does qualify for subdivision; Mr. Parvin explains it does with the exception of two criteria under 12-106 Lots (b) & (c). Mr. Miller understands that tract 2 currently exists at 7,024sf; Mr. Parvin explains that there is only one tract right now and that the Commission can grant the variance to allow two tracts.

Mr. Miller asks...

Applicant

Keith Barnhart, Harris Barney Ltd – Explains the area where this subdivision is located. Mr. Ferguson explains the setback problems, including the minimum lot depth requirement for which staff is next month proposing to eliminate. Mr. Barnhart corrects a type in his application – where it says 2.25ft it should say 4.25ft. He then explains that having a PUD is an option for this property, but not a desirable one. Splitting the lot into two would be much cleaner for the eventual homeowners because there will not have to be a homeowners' association, etc. There seems to be a concern that the view on the corner would be obstructed so safety of drivers would be decreased; he ensures the Commission that he will build very far off that setback so the view is not compromised. He also ensures that they are over their setback requirements in each area by more than 3ft. The frontage he is over by 5.5 to 6ft.

Mr. Underwood asks staff if this property is eligible for a PUD; Mr. Parvin answers that it is now because two nights ago Town Council voted to remove the 2-acre minimum. Mr. Underwood acknowledges that the applicant can now build on this property under PUD; Mr. Parvin says he would have to get a CUP.

Public Hearing

Mr. Rees moves to open public hearing. Mr. Reynolds seconds. All ayes.

No one speaks.

Mr. Rees moves to close public hearing. Ms. Eford seconds. All ayes.

Public Hearing Closed

Commission Discussion

Ms. McQuillen does not have a problem with the variances because the applicant does have the required square footage. She also feels it will not be a safety issue, and that it is an improvement.

Required Findings

Sec. 12-50 Variances

1. The granting of the variation will not be detrimental to the public safety, health, or welfare, or injurious to other property or improvements in the neighborhood in which the property is located.
 - No one thinks there is a safety, health, or welfare factor.
2. The conditions upon which the request for a variation is based are unique to the property for which the variation is sought and are not applicable generally to other property.
 - Mr. Miller thinks this is simply someone buying a lot and trying to make it two lots. Ms. McQuillen says that other properties in that area probably suffer the same predicament.
3. Because of the particular physical surrounding shape or topographical conditions of the specific property involved a particular hardship distinguished from a mere inconvenience to the owner would result if the strict letter of this article is carried out.
 - Mr. Underwood says there is obviously another alternative (PUD), so he believes it does become an issue more of convenience. Mr. Reynolds agrees.
4. The purpose of the variation is not based exclusively upon a desire to make more money out of the property.
 - Ms. McQuillen says the applicant stated he is not trying to make more money out of it. Mr. Underwood says that two houses are worth more than one; Ms. McQuillen agrees and adds that the property values go up. Mr. Miller says when they purchased it, it was one lot, and this request is merely trying to help the developer make more money. He says the Town is creating non-conforming situations and trying to adjust the ordinance to make a situation conforming, rather than address the non-conformity and how else it can be resolved.

Ms. McQuillen asks for guidance from staff; Mr. Ferguson says this is not like a zoning variation where if any of the six tests is failed then the entire application is denied. In this case, the entirety should be considered, and then the Commission should make a determination. Mr. Reynolds asks about the minimum lot depth requirement text amendment coming next month; Mr. Ferguson explains that there is a question as to whether it satisfies a particular need of the town.

Councilman Dan Wilcox, 614 Monroe – Regarding the comment that this request is driven to make more money, Mr. Wilcox says they can still build two houses there because the PUD is now available to them. However, the people who ultimately will live there would not have to deal with the HOA and the problems that typically come with one if this variance is granted.

Commission Discussion Cont'd

Ms. McQuillen does not like PUDs on single lots, and would much rather give a variance for this rather than have another single-lot PUD. She asks if the Commission can make a condition that the corner have a 19ft setback. Ms. McQuillen asks the applicant if that would work for him; Mr. Barnhart replies that he thinks he can do it. Mr. Rees says the 10ft requirement was probably put in the ordinance for a 50ft lot; Mr. Parvin says probably so. He adds that the subdivision regulations have not been updated since the 1970's and they need to be revamped.

Motion

Ms. McQuillen moves to recommend approval of this subdivision variance request, to give a variance of 4.43ft on the depth, to give a variance on the corner of 6.5ft, to add a condition that the setback on the corner lot will be 19ft versus the 12.5ft, and it to advise that this is consistent with the Land Use Plan. Mr. Underwood seconds. All ayes. **Motion carries unanimously (6 to 0).**

ITEM #6 **Public Hearing:** Consider Amending the Code of Ordinances: Chapter 8 Article IX Sidewalk Cafes to specify allowance in the Central Business District **10:17pm**

Mr. Parvin presents his memo

ARTICLE IX. SIDEWALK CAFES*

***Editor's note:** Ord. No. 06-650, adopted July 11, 2006, repealed the former Art. IX, §§ 8-184--8-192, and enacted a new Art. IX as set out herein. The former Art. IX pertained to similar subject matter and derived from 06-626, 4-11-06.

DIVISION 1. GENERALLY

Sec. 8-184. Permit generally.

The town manager or his designee may issue permits for the serving of food and beverages on town sidewalks and pedestrian ways in the ~~Central Business District~~ ~~area of the town known as the central business district overlay area and classified as the central business district overlay (CDBO) pursuant to article 4 of the town zoning ordinance.~~ (Ord. No. 06-650, 7-11-06)

Sec. 8-185. Definitions.

The following definitions shall apply in this section:

- Pedestrian way.* An improved walk or passageway intended for use by pedestrians, but not adjacent to any city street.
- Restaurant.** An establishment whose principal business is the sale of foods, frozen desserts, or beverages to a customer in a ready-to-consume state, and whose design and principal method of operation determines its classification as follows:
- (1) Table service or cafeteria:
 - (a) Customers are provided with an individual menu and served by an employee at the same table or counter at which their food and/or beverages are consumed; or
 - (b) A cafeteria-type of operation where foods and/or beverages generally are consumed within the restaurant.
 - (2) *Carry-out/fast food:* Food is usually served in edible containers or in paper; plastic, or other disposable containers by an employee at a standing counter or drive-in window. Consumption may be off the premises, within the principal building, or at other facilities on the premises outside the principal building.

*From Article 23, Definitions of the town zoning ordinance

Restaurant operator. The person, firm, or corporation operating a restaurant and associated sidewalk cafe. As used in this section, this definition includes the owner, and manager if different from the owner, of the restaurant and associated sidewalk cafe.

Sidewalk. That portion of a public street between the curb line, or the lateral lines of the roadway if there is no curb and the adjacent property line that is intended for the use of pedestrians.

(Ord. No. 06-650, 7-11-06)

DIVISION 2. PERMIT AND OPERATION

Sec. 8-186. Application.

Any restaurant desiring to operate a sidewalk cafe shall prepare and file an application with the town manager or his designee which shall contain the following information.

- (1) The name, address, and telephone number of the restaurant desiring to operate a sidewalk cafe.
- (2) The name, address, and telephone number of the restaurant operator.
- (3) The type of food, beverage, or food product to be sold and served at the sidewalk cafe.
- (4) The hours of operation of the restaurant and the proposed hours of operation of the sidewalk cafe.
- (5) A drawing or site plan showing the section of sidewalk or pedestrian way to be used for the sidewalk cafe, and the section to be kept clear for pedestrian use, and depicting the proposed placement of tables, chairs, barricades, and other furnishings on the sidewalk or pedestrian way.
- (6) Evidence of adequate insurance or other forms of security to hold the town and its taxpayers harmless from claims arising out of the operation of the sidewalk cafe, as determined by the town manager in consultation with the town's insurance carrier.
- (7) An indemnity statement, approved by the town attorney, whereby the restaurant operator agrees to indemnify and hold harmless the town and its officers, agents, and employees from any claim arising from the operation of the sidewalk cafe.
- (8) A copy of all permits and licenses issued by the state or the town, including health and ABC permits and business licenses, necessary for the operation of the restaurant business, or a copy of the application for the permit if no permit has been issued. This requirement includes any permits or certificates issued by the town for exterior alterations or improvements to the restaurant.
- (9) A sworn statement describing any violation by the restaurant operator of any laws, regulations, or ordinances relating to the possession, sale, consumption, or transportation of intoxicating beverages or controlled substances during the five (5) years immediately preceding the date of the permit application.
- (10) Such additional information as may be requested by the town manager or his designee to determine compliance with this section.
- (11) A fee as established by the town manager to cover the cost of processing and investigating the application and issuing the permit.

(Ord. No. 06-650, 7-11-06)

Sec. 8-187. Issuance of permit.

No permit for the operation of a sidewalk cafe may be issued unless the application is complete and unless the following requirements are met:

- (1) The sidewalk cafe must be associated with an operating restaurant such that it is under the same management and shares the same food preparation facilities, restroom facilities, and other customer convenience facilities as the restaurant. The sidewalk cafe must be operated under the same name as the restaurant and may not be open or operated at any time when the restaurant is not open for business.
- (2) The operation of the sidewalk cafe must be clearly incidental to the associated restaurant business. The seating capacity of the sidewalk cafe may not be more than fifty (50) percent of the interior seating capacity of the associated restaurant.
- (3) The placement of tables, chairs, and other furnishings, as shown in the drawing submitted with the site plan, must be done in such a manner as to comply with article 4.1(d)(1)(a). Use of outside seating, of the town's zoning ordinance.
- (4) The restaurant seeking to operate the sidewalk cafe must front on and open onto the sidewalk or pedestrian way proposed for the sidewalk cafe.
- (5) The tables, chairs, barricades and other furnishings used in the sidewalk cafe shall be of a type that is easily removed from the public right-of-way. Tables, chairs, barricades, and other furnishings used in the operation of the sidewalk cafe must be removed within twenty-four (24) hours of notice from the town. If such items are not removed upon twenty-four

(24) hours' notice, the town shall have the right to remove and dispose of these items and may assess the property owner for the cost of such removal and disposal. The town shall also have the right to remove such items immediately in emergency situations. The town shall not be responsible for damage to public sidewalk cafe barricades and furnishings under any circumstances.

(7) Except as elsewhere permitted, the operation or furnishing of the sidewalk cafe shall not involve any permanent alteration to or encroachment upon any street, sidewalk, or pedestrian way or to the exterior of the associated restaurant. The owner of the sidewalk cafe shall be responsible for repairing any incidental damage to public sidewalks resulting from the operation of the sidewalk cafe.

(8) No person shall operate a sidewalk cafe later than 11:00 p.m. and quit serving alcohol no later than 10:30 p.m. Sunday through Saturday. After such hours, the area of the sidewalk cafe shall be open to the public and shall not be considered part of the premises of the restaurant. Any person consuming alcoholic beverages in a sidewalk cafe after such hours shall be subject to the provisions of section 10-2, drinking in public of the Town Code.

(Ord. No. 06-650, 7-11-06)

Sec. 8-188. Alcoholic beverages.

Notwithstanding the provisions of section 10-2 of the Town Code, alcoholic beverages may be served at sidewalk cafes provided the following requirements are met:

(1) The sidewalk cafe shall be part of a standard restaurant as that term is defined in section 8-185 of the Town Code, and shall otherwise be authorized, permitted, or licensed under the state law and Town Code to serve and sell alcoholic beverages for on-premises consumption.

(2) The portion of the sidewalk cafe where alcohol is or may be served shall be enclosed by clearly visible barricades and shall have not more than two (2) points of ingress and egress.

(3) The sidewalk cafe must be included as part of the premises for which an ABC permit is issued pursuant to G.S. § 18B-1001 for the purpose of applying and enforcing state laws regarding the sale or consumption of alcoholic beverages.

(4) Signs shall be posted, visible at all exit points from the sidewalk cafe, that it is unlawful to remove alcoholic beverages in open or unsealed containers from the premises. Further, consumption of alcoholic beverages shall only be allowed while seated at the tables of the sidewalk cafe.

(5) The restaurant operator shall not have violated any law, regulation, or ordinance relating to the possession, sale, transportation or consumption of intoxicating beverages or controlled substances for the three (3) years preceding the commencement of the sale of alcoholic beverages at the sidewalk cafe.

(Ord. No. 06-650, 7-11-06)

DIVISION 3. DENIAL OR REVOCATION OF PERMIT

Sec. 8-189. Denial.

A permit may be denied if it is found that the granting of the permit would not be in the public interest. Any applicant denied a permit to operate a sidewalk cafe shall receive a written statement, outlining the grounds on which the denial is based. The applicant may appeal the denial of the permit to the town council within fifteen (15) working days after the date of the written denial and the town council may take such corrective action as it shall find necessary. The findings and determination of the town council shall be final.

(Ord. No. 06-650, 7-11-06)

Sec. 8-190. Permit revocation.

The town manager may revoke a permit issued pursuant to this section, if he finds that the restaurant operator has:

(1) Deliberately misrepresented or provided false information in the permit application.

(2) Violated any provision of chapter 8, article VIX of the Code of the Town of Carolina Beach or county health department regulations.

(3) Violated any law, regulation, or ordinance regarding the possession, sale, transportation or consumption of intoxicating beverages or controlled substances.

(4) Operated the sidewalk cafe in such a manner as to create a public nuisance or to constitute a hazard to the public health, safety, or welfare; specifically including failure to keep the sidewalk cafe area clean and free of refuse.

(5) Failed to maintain any health, business or other permit or license required by law for the operation of a restaurant business.

Before the revocation of a permit, the town manager shall notify the permit holder of his/her intent to revoke the permit and the reasons therefore and shall afford the permit holder a reasonable opportunity to appear and be heard on the question of such revocation. After the hearing, the town manager shall notify the permit holder in writing of this decision

and the reasons therefore. A decision of the town manager to revoke a permit may be appealed to the town council in accordance with the provisions of section 8-189.

(Ord. No. 06-650, 7-11-06)

DIVISION 4. RESERVATION OF RIGHTS AND TERMS

Sec. 8-191. Reservation of rights.

The town reserves the right to require any sidewalk cafe established pursuant to this article to cease part or all of its operation in order to allow for construction, maintenance, or repair of any street, sidewalk, utility, or public building by the town, its agents or employees, or by any other governmental entity or public utility; and to allow for use of the street or sidewalk in connection with parades, civic festivals, and other events of a temporary nature as permitted by the town.

(Ord. No. 06-650, 7-11-06)

Sec. 8-192. Term, transfer, renewal, etc.

Permits issued in accordance with the provisions of this section shall:

- (1) Be issued for the period beginning September 1 and expiring August 31 of each year.
- (2) Be in addition to the annual privilege license required pursuant to article II of this chapter and the fee schedule.
- (3) Not be transferable or assignable.

(Ord. No. 06-650, 7-11-06)

LONG RANGE PLAN CONSISTENCY

TECHNICAL REVIEW COMMITTEE

TRC recommends approval of the text amendment and finds the proposal to be generally consistent with the land use plan and other long range planning documents.

26. In an effort to revitalize the Central Business District the Town shall consider new economic development and redevelopment projects that support a resort-market niche, family-oriented businesses and year-round residency and does not diminish the quality of life or environment.

27. The Town will encourage new and expanding businesses that provide goods, services, and family oriented entertainment to year round residents and visitors. Examples include appropriately scaled and designed grocery stores, drug stores, restaurants, and entertainment.

PLANNING AND ZONING:

APPROVAL

Recommend approval of the proposed amendment to advise that it is consistent with the land use plan and other applicable plans, and to adopt the staff report which addresses plan consistency and other matters.

DENIAL

Recommend denial of the proposed amendment, to advise that it is inconsistent with the land use plan or other applicable plans, and to adopt the staff report which addresses plan consistency and other matters.

TOWN COUNCIL:

APPROVAL

WHEREAS, in accordance with the provisions of North Carolina General Statute 160A-383, the Town Council does hereby find and determine that the adoption of the following ordinance amendment is consistent with the goals and objectives of the adopted land use plan and other long range planning documents.

DENIAL

Motion to deny the zoning request based on inconsistencies with the goals and objectives of the adopted land use plan and/or other long range planning documents.

COMPLIANCE WITH N.C. GENERAL STATUTES: Yes.

Commission Questions

None

Public Hearing

Ms. Efird moves to open public hearing. Mr. Rees seconds. All ayes.

Don Motsinger, 107 Carolina Beach Ave S – Sidewalk cafes are a good thing. However, skateboards are a problem in the CBD in the summer time and expresses concern about skateboarders riding so close to the patrons who may be sitting out on a sidewalk café. He asks that the Town enforce its rule that no skateboards are allowed in that area.

Mr. Underwood moves to close public hearing. Ms. Efird seconds. All ayes.

Public Hearing Closed

Commission Discussion

Mr. Underwood and Ms. McQuillen think this is a great idea; activity begets activity. Mr. Rees points out that if someone across from a sidewalk café, such as what Black Horn has on the Boardwalk, wanted to also have sidewalk café seating, there would be very little walkway room between the two. Ms. Efird says it can be denied; Mr. Ferguson agrees.

Ms. Efird likes the idea.

Motion

Ms. Efird moves to recommend amending the Code of Ordinances, Chapter 8, Article IX Sidewalk Cafes to specify allowance in the Central Business District, and to advise that this is consistent with the Land Use Plan. Mr. Rees seconds. All ayes. **Motion carries unanimously (6 to 0).**

ITEM #7 Non-Agenda Items

10:25pm

Ms. Efird asks if skaters are supposed to be wearing protective gear at the Skate Park. Mr. Ferguson explains that as long as there is a sign posted that says, “Skate at Your Own Risk” and the Town does not have officers stationed there to oversee it, then it is the skaters’ responsibility and risk.

ITEM #8 Adjournment

10:27pm

Ms. Efird moves to adjourn. Mr. Underwood seconds. All ayes.