

TOWN OF ATLANTIC BEACH
October 7, 2009

APPROVED

Planning Board Minutes

Members Present

John Hopkins
Steve Joyner

Staff Present

Nina Erwin, Secretary
Jessica Fiester, Planner

Others Present

Harry Archer, Mayor Pro-Tem
Mike Shutak

Ray Langley, Chairman
Norman Livengood, Vice-Chair
Scott Rice, MD
John Rivers

Jim Willis

Members Absent

Larry Burke (Illness)

CALL TO ORDER

Chairman Ray Langley called the meeting to order at 6:00 pm.

PUBLIC COMMENT ON AGENDA ITEMS

James Willis, III resides at 104 Atlantic Beach Causeway, Atlantic Beach, NC

(Mr. Willis spoke on Agenda Items 6A and 6D. Concerning **6A**, Mr. Willis asked the Planning Board to provide a definition of “improved property.”)

Mr. Willis stated that the County determines the property numbers of property. Some property they will approve and some they will not approve. For example, the County will give a dock a property number but not a wall or parking lot. The definition needs to fit the criteria of the County. If the definition is such that includes property they won't number, it will never get a number because the Town has given it all to the County.

Mr. Willis said there are two (2) sets of property numbers in the Town that do not correspond to each other. Next door to me, the County has Freeman's Discount Bait & Tackle addressed as #112 and on the front of the building it is #108. I am making you aware of this discrepancy and in this definition, you need to come out with it so I will know whether to try again to get a number for that wall or not. If you want walls to have a property number, you are going to have to talk with the County or else leave it out of the definition.

The second item is **6D** (Causeway Overlay Option). Mr. Willis said from the beginning, this Causeway Overlay District was put forth as optional. I took that to mean you could either be in it or out of it. In July, it suddenly was policed through with this boundary that did not come before the Planning Board. Mr. Willis asked the board to please adopt this amendment which would allow the people who want to

opt out a way to opt out.

Mr. Willis asked: Do you want to know the reason I want to get out of the district? Most people who come to Atlantic Beach, come with the attitude that they can always sell and get out and make a good profit on their investment. I don't intend to sell and make a profit on my investment. So my big thing is taxes.

Mr. Willis stated that getting in this Causeway Overlay District will mean that I will have more options of what to do with the property. The next re-evaluation that comes along, taxes will go up. If I am right, the Causeway Overlay District (COD) and the Circle Development District (CDD) will get together and try to form one (1) central business sewer district. Mr. Willis said if that happens and it goes through, property evaluation goes up again because sewer is available. When the sewer is put through, there is cost of the sewer going in, the connection fee, and the monthly bill whether you use it or not. We have enough vegetation to take care of the stormwater. So it is a losing game with us if we stay in the COD and have all those benefits, but there should be an option out as it was specified at the very beginning. It never came back to the Planning Board, and I think it should have before the district boundaries were set in concrete.

APPROVAL OF SEPTEMBER 1, 2009 MINUTES

Chairman Langley called for a motion to accept the September 1, 2009 minutes. **Scott Rice made the motion to accept the September 1, 2009 minutes. Steve Joyner seconded the motion. The motion passed unanimously (5-0).**

LAND USE PLAN LANGUAGE APPROVAL/RECOMMENDATION

Planner Fiester said the Unified Development Ordinance (UDO) with the future Land Use Plan that CAMA requires us to have needs to be streamlined. In order to do this and update the plan, a recommendation needs to be made on the map and the text changes with the map. What you have in your packets are the only changes going through the Land Use Plan. Everything else will stay the same. There are several changes to the text. The Council will need to set up a public hearing and go through the advertising process in order to officially update this, but the Planning Board needs to make a recommendation.

The first change Staff recommends is in Part A of the text. There is a conservation description which lists Marinas. Marinas would not be allowed in the Conservation District. It is recommended that Marinas be removed. On the last page, the very last item states maximum lot coverage at 40%. This item needs to be updated because in the General Business District (GBD) and CDD 85% coverage is allowed.

On the Land Use map, RS means Recreational Sound and in the UDO, RS means Resort Services.

Chairman Langley asked for a motion to accept the changes to the Land Use Plan language as specified. **Scott Rice made the motion to accept the changes to the Land Use Plan language as specified. Norman Livengood seconded the motion. The motion passed unanimously (5-0).**

LAND USE PLAN MAP APPROVAL/RECOMMENDATION

Chairman Langley called for a motion to approve or deny the Land Use Plan map. **Norman Livengood**

made the motion to approve the Land Use Plan map. John Rivers seconded the motion. The motion passed unanimously (5-0).

Planner Fiester will request that Council set up a public hearing on the Land Use Plan Map. It will be set up at the October meeting for a November public hearing. Once that occurs, if there is a positive recommendation and no further changes recommended, it will be submitted to the Coastal Resources Commission (CRC) for their review and adoption.

UDO TEXT AMENDMENTS

6-A Section 2.24 improved property – definition and clarification

Planner Fiester stated “improved property” is not a commonly used definition. Three municipalities and governments use the term “improved property”. Planner Fiester said it is recommended that the definition be removed and replaced with “The property owners of real property containing a structure, shall purchase and display in a conspicuous place...”. This would apply to a wall, dock or anything with something built on it. There is a clear definition of what a structure is.

There is another amendment to the same section. It clarifies if you have an undevelopable parcel seaward of property, we would still consider the property waterfront. There are several instances in the old parts of the Town where there are undevelopable parcels of land sitting seaward of developed lots. Obviously, we do not need a different address on lots that look like they are part of another lot.

Chairman Langley said there are numerous places on East Boardwalk where the houses cannot be seen from the beach because of the dune line. Property numbers have to be placed where it can be seen from the beach. Planner Fiester asked if the committee wanted property numbers on parcels with a house on it. It was discussed thoroughly at the UDO meetings that people were allowed to put an accessory on the property without having a home or building on the property. That meant a shed or dock on a piece of property that did not have anything else on it. Planner Fiester stated if there is a structure on the property it must have an address. Planner Fiester said that was a recommendation. The Police and Fire Chiefs were very strongly in agreement that this needs to be done, particularly on the ocean-front side because of accidents.

Scott Rice said that it is a forward moving change to say structure instead of improved property. It seems more appropriate and specific. Chairman Langley stated that structure would include anything that is man-made and is added to the property. Planner Fiester agreed.

John Hopkins asked if it included soundside also. Planner Fiester said it would be any waterfront property which would be soundside, canals and oceanfront. Planner Fiester stated that “structure” is very clearly defined. Anything constructed or erected, the use of which requires location on land or attachment to something having permanent location. That would include a dock. There are plenty of dock regulations.

Chairman Langley called for a motion to remove “improved property” and insert “structure.” **Steve Joyner made the motion to remove “improved property” and insert “structure.” Scott Rice seconded the motion.** The following discussion took place after the motion.

Jim Willis said that the County issued an address for his dock; however, he did not receive an address for the wall on his property. Planner Fiester said that she believes the wall is attached to the parcel with

the structures on it. Jim Willis stated he needs someone to give him a number and he will put it up. Chairman Langley assured Jim Willis that Planner Fiester will take care of the matter.

John Hopkins asked if “seaward” meant the sound and the ocean. Planner Fiester said yes and it has been streamlined with CAMA. Planner Fiester suggested that “seaward” be changed to “waterward.” John Hopkins was in agreement. Chairman Langley asked where “waterward” would be inserted. Planner Fiester said wherever “seaward” appeared.

The motion passed unanimously (5-0).

6-B Section 6.18 CUP expiration on mobile homes

Planner Fiester said a conditional use permit for a mobile home park needs to be renewed every three (3) years. A Conditional Use Permit has very specific conditions and Staff would agree that it is unnecessary to renew a Conditional Use Permit on a mobile home park every three (3) years. Planner Fiester stated that her recommendation would be to:

- (1) Amend the language in Section 6.18 as it's listed, to remove and subsequently be renewed in Section 2.
- (2) Change in Section B-1 “alters” to the word “increases”.
- (3) Remove all of Section 6, located in Part 6, on page 6-34.

Planner Fiester said the board could adopt proposed changes as written.

Chairman Langley asked about the Conditional Use Permit being renewed every three (3) years for a mobile home park. Planner Fiester said there was no specific discussion throughout the 38 meetings. Most likely, it came from language another town had used and was left in that section.

Chairman Langley called for a motion to accept or deny the text amendments as written. **Scott Rice made the motion to accept the text amendments as written. Norman Livengood seconded the motion.** Chairman Langley asked if there was any discussion before the voting.

Scott Rice stated that under Staff Report (Section 6.18 CUP), there are three (3) sentences. The third sentence says “In no other instance **to** we require a conditional use permit to be reissued unless work is never commenced.” The sentence should read “In no other instance **do** we require a conditional use permit to be reissued unless work is never commenced.”

The motion passed unanimously (5-0).

6-C RS District Setback change for single-family homes

Planner Fiester stated that many phone calls were received after this was adopted. The Recreational Services District was used in a lot of places where we used to have Resort Residential in an attempt to keep some conformity in these areas. There are a lot of conditional uses that can be applied for. Our intent in our discussions was to make sure we were protecting adjacent property owners that could be impacted by commercial uses.

Single-family homes and duplexes are use-by-right; however, on our small lots, it is very difficult when there are massive setbacks on the front, side, and rear of the property. If we do not make some changes to the setbacks, we will be faced with a situation where we will be sending variances for every single-family home to the Board of Adjustment. If someone chooses a single-family home or duplex in the RS District, they should have an exception and be allowed to use side, front and back setbacks that we would use for any other residential area. They would be able to develop their property more easily. There are areas on Fort Macon Road where this would make property undevelopable. That certainly was not our intent.

Planner Fiester recommended leaving the setbacks for anything besides a single-family dwelling or a duplex as it was written originally, but putting this exception in Section 5.6 on the chart. The changes are listed in red. The setbacks for single-family homes and duplexes in the RS District are subject to the setback and height requirements listed second, which would be ten (10) feet on the front, five (5) feet on the side, and ten (10) on the rear. This is what they were before we enacted the Unified Development Ordinance (UDO).

Scott Rice requested that Planner Fiester again explain the difference in the two (2) values. Planner Fiester stated that if you build anything on your property besides a single-family home or a duplex, the first setbacks will be used (25-10-20), and also the height listed. If you want to build a single-family home or a duplex in the RS District, the second set of setbacks will be used which are the same setbacks as most of our residential districts.

Chairman Langley said the dual setbacks listed are fine as long as there is an asterisk that leads to the explanation of the dual setbacks.

Chairman Langley called for a motion to accept or deny the text amendments to Section 5.6 as written on the chart with an asterisk and explanation at the bottom. **Norman Livengood made the motion to accept the text amendments to Section 5.6 as written. John Rivers seconded the motion.** Chairman Langley asked if there was further discussion on this text amendment. There was no further discussion or comments. **The motion passed unanimously (5-0).**

6-D Page 6-2 clarify that COD is an optional overlay and discussion on COD boundaries

Planner Fiester said that 6-D ties in with item 6-E on the agenda. Six-E is a citizen-initiated text amendment request that is listed in 6-E.

The text amendment reads “**for property owners who wish to take advantage of the benefits outlined in this article.**” Planner Fiester said this statement clarifies that you are not in the Causeway Overlay District (COD) until you take advantage of the benefits outlined in the article. Steve Joyner suggested that the statement be changed to read “for property owners who wish to **opt in** and take advantage of the benefits outlined in this article.” That means you are **not in**. That statement is clear you are **not in**. You have to **opt in**. Planner Fiester agreed.

Chairman Langley stated that the COD was not established to hurt anyone, cause anyone more taxes, or make them put in a sewer line to the house. If the Council decides to do that, it is a totally separate issue from the COD. It's purpose is so businesses could be on the first floor and gain an additional ten

(10) feet of height, and have the storefronts on ground level. That was the primary reason for establishing the COD, and certainly not to penalize anyone. If a particular property owner does not want to participate, so be it. Chairman Langley stated he could not see any liability to any property owners in the COD. Jim Willis said that there was no way to get out, and it was never put to the property owners as an option. It was just rammed through by the Council. It did not come back to the Planning Board.

Planner Fiester stated if it was a text amendment to something that had already been adopted, it would have needed to come back to the Planning Board for their approval. What we did was perfectly legal because this was a work-in-progress and something that was not adopted. Chairman Langley said he was satisfied the board followed the proper steps. Jim Willis stated he thought the board did, but was not sure the Council did. Chairman Langley stated that he felt very comfortable that the Council followed the proper steps and did not see it as an issue.

Chairman Langley asked for a motion to accept or deny the text amendment to Section 6.1.1 which reads “for property owners who wish to **opt in** and take advantage of the benefits outlined in this article.” **Steve Joyner made the motion to accept the text amendment. Scott Rice seconded the motion.** Chairman Langley asked if there was any discussion or comments on this text amendment. There was no discussion or comments. **The motion was passed unanimously (5-0).**

6-E Section 5.4.2 Causeway Overlay District – Addition of optional clause

Planner Fiester requested the board consider the citizen-submitted text amendment. Chairman Langley asked if what the board had just approved, would that not negate this request? Planner Fiester explained this text amendment clarifies the original issue; however, it is Jim Willis' right to submit a text amendment and the board owes it discussion. Planner Fiester stated if the board chooses to recommend or chooses not to recommend this text amendment, it will go to the Council and the Council will decide whether or not to set up a public hearing on it. Chairman Langley asked if what the board would be voting on would be the appended paragraph as it is written. Planner Fiester said yes.

Jim Willis asked if he was in the COD or out of it. Chairman Langley said that Jim Willis would have to opt-in if what was suggested passed. Jim Willis asked if he would be out until he opted-in. Chairman Langley said that was correct. Planner Fiester said in or out, it is an overlay district. We are making this too complicated. The previous recommendation made by Steve Joyner clarifies what the board needs to clarify. Chairman Langley stated the board could deny the request because it has already been taken care of in the previous amendment.

Chairman Langley called for a motion to accept or deny the text amendment as written. **Scott Rice made the motion to accept the text amendment as written. Scott Rice withdrew his motion. Norman Livengood made the motion to deny the text amendment. Steve Joyner seconded the motion.** Chairman Langley asked if there was further discussion. There was no further discussion. **The motion passed unanimously (5-0).**

STATIC LINE EXCEPTION UPDATE

Planner Fiester said the Town of Atlantic Beach is moving forward with a static line exception application. The Coastal Resources Commission (CRC) made a number of significant changes. One of these changes gives municipalities that have a static line,(nourished beach and receive sand that they put

on that beach) the ability to apply for an exception. Right now in Atlantic Beach, there is a static line which is the seawall. What this application is going to do would allow, in instances where the vegetation line has been reestablished, a closer setback than the seawall would. CAMA also changed the way it deals with the size of what you can develop on the ocean in regards to setbacks. CAMA has changed it from being a commercial use versus a residential use to just by the square footage. When determining the setback, you cannot be waterward of your neighbors.

The biggest benefit for Atlantic Beach in using the exception would be that we can make our beach accesses handicap accessible without having to go to CRC and ask for a variance on each one as they are completed. The beach accesses could be improved so that handicapped people and everyone else would not have to hike over a dune or piles of sand. The accesses would be extended further and make them more convenient for people to use.

We have signed the contract with Coastal Planning & Engineering. It is the same firm that wrote contracts for Carolina Beach and Wrightsville Beach. They both paid about \$15,000 for their contracts. The firm has also been hired to do Emerald Isle. It will cost the Town of Atlantic Beach approximately \$7000 to accomplish this.

Scott Rice commented on the parking situation in his neighborhood which is unresolved. Planner Fiester stated that the Public Works Director's next project will be the parking situation. The director has numerous different layouts of the parking. Planner Fiester said he has not picked out which one he likes the best at this time. He will present his choice to the Council.

Norman Livengood asked what was going to be done about the Showboat Motel. Planner Fiester said she would refer that to Donna Turner, Inspections Director. The Special Use Permit was issued to put homes there. We did not have a time limit on the Special Use Permit at the time it was issued. Before we began the UDO, a text amendment was made where once a Special Use Permit was issued, it had to be pulled within two (2) years. That would not apply to those Special Use Permits at that time. Those permits were in perpetuity, and to this day the permits could be pulled. Donna Turner and Joey Starling periodically go through the Showboat Motel and as long as there are no code violations, to a certain extent the motel is still allowed to be there.

Harry Archer said there have been comments as to why the Showboat Motel has not been demolished. After an extremely thorough inspection, it was found that one (1) or two (2) minor items that needed to be fixed. The building was up to code in every fashion. When the economic stress and conditions are over, the owners will proceed with their plans.

Harry Archer also stated the minutes should reflect that Planner Fiester should be added along side the name of Rudy because she volunteered to take on this in-house additional work and thereby putting through our application. The outlay of funds was cut in half. Chairman Langley stated that was a very big accolade. He stated all of us that deal with the Town government in whatever form are very much aware of the job that Planner Fiester does and are very appreciative. We are very fortunate that Planner Fiester is in the position of Town Planner.

ARTICLE 8 MARINAS – REVIEW AND AMENDMENT DISCUSSION

Planner Fiester said the language of the Marina Ordinance had not changed very much from what it used

to have (before UDO). In the UDO, specific processes were laid out on how to go through and get a Conditional Use Permit, or how to go through the Technical Review Committee (TRC). They should be the same for any project (mobile home park, marina, large condo development). The ordinance is not streamlined with the processes of everything else.

Planner Fiester stated that while working on the Marina Ordinance, she changed how marinas were classified, and removed the processes that are unique only to this ordinance. The UDO was created so there would not be situations like this. Marinas will be discussed as a first item on the agenda at the November 2009 meeting. Planner Fiester completely changed Class I, II, III and IV Marinas and rewrote how it was done. Basically, there would be a marina with a home, a marina in addition to a mobile home park and then a free-standing marina. Several people who own marinas have submitted feedback on things that needed to be changed and those things have been added. It may take a few more meetings before it is recommended for adoption.

MARINA DEFINITION

Planner Fiester stated that the definition of Marina needs to be updated. This will be discussed at the November 2009 meeting. Also for discussion will be how to reorganize Article 8.

STORMWATER INTRODUCTION

Planner Fiester said as part of the Clean Water Management Trust Fund Grant, we stated that the stormwater ordinances would be updated. Dale Holland recommended we not include stormwater in the UDO and leave it as a free-standing ordinance. One of the goals in the points of things we needed to accomplish in order to receive the money for the stormwater grant (money was received), was to get working on a Stormwater Ordinance. The ordinance at this time is very straightforward on what can be covered, and to acquire an engineer when you go over a certain percentage. The Town Council is interested in providing the people with more options. Maybe a person should have credit for permeable pavement, and credit for a rain garden. We will be looking at some model ordinances in working with the Council to get the Stormwater Ordinance written.

Scott Rice commented one of the first things discussed concerning stormwater would be taking care of the low-lying areas of flood that the Town has to pump out on the beach. Planner Fiester said there are two (2) areas of stormwater. There is stormwater for development and redevelopment. There are stormwater issues and infrastructure things that are Public Works issues. There was a meeting recently, attended by Council members, our consulting firm and Mark Schulz. All the areas of Atlantic Beach that are documented to have stormwater problems were discussed. The first priority was to fix things that could be fixed with the least expense. At our next meeting, we will prioritize the areas of Atlantic Beach that will get funded. A speaker will come to our Council meeting and discuss the different stormwater eradication options and talk about rain gardens.

FINAL COMMENTS FROM MEMBERS

Chairman Langley called for any final comments from members.

Scott Rice stated that tonight's meeting was productive and he was pleased with the progress that was made. He believed that the board is helping everybody as best as possible. Chairman Langley said that is our goal.

ADJOURNMENT

Chairman Langley called for a motion to adjourn. **Norman Livengood made the motion to adjourn. Scott Rice seconded the motion. The motion pass unanimously (5-0).** The meeting was adjourned at 7:04 pm.

Respectfully submitted,

Nina M. Erwin, Secretary

Approved,

Ray Langley, Chairman