



**Minutes
Town of Atlantic Beach
Planning Board Meeting
June 6, 2017**

Planning Board Members

Present

Neil Chamblee
Llewellyn Ramsey
Rich Johnson
Steve Joyner
Norm Livengood
Rich Porter
Curt Winbourne

Planning Board Members

Absent

None absent.

Staff Present

John Harrell, Inspections Director
Megan Hunter, Secretary
Arrington Moore, Management Assistant
Michelle Shreve, Planning Director
Katrina Tyer, Town Clerk

Others Present

Harry Archer, Town Council
Eddie Briley, Town Council
John Rivers, Town Council
Chad Meadows of CodeWright
Mike Shutak, Carteret County News Times

CALL TO ORDER

Chair Chamblee called the meeting to order at 6:00pm. Winbourne made a motion *to open* the meeting, seconded by Porter. Vote was unanimous, 6-0. Motion carried.

MOTION TO EXCUSE ABSENT PLANNING BOARD MEMBERS

None absent. No motion made to excuse.

APPROVAL OF ANY PRIOR PLANNING BOARD MINUTES

Chair Chamblee noted the last two meetings were joint meetings with Town Council so there were no minutes to approve.

Chair Chamblee noted that both items on the agenda were public hearings. For anybody that wished to sign up to speak that hadn't already, he pointed out that the sign-up sheets were located in the back of the meeting room. He explained that each speaker would have two minutes to speak, and asked that speakers not duplicate comments. All comments would be forwarded to staff and Board of Adjustment members.

CUP-17-01 – “The Hill” (320 EAST FORT MACON ROAD)

Chair Chamblee noted that the Planning Board would make a recommendation to the Board of Adjustment and that the Board of Adjustment would make the final decision. Chamblee turned the meeting over to Michelle Shreve, the Planning Director, to introduce the conditional use permit.

Michelle stated that the first item on the agenda was the conditional use permit application by Dan Hill to operate a bar called “The Hill” at 320 East Fort Macon Road. Section 14.3.4 of the UDO requires that the Planning Board review Conditional Use Permit applications to, “... suggest reasonable conditions to the location, nature, and extent of the proposed use and its relationship to surrounding properties, parking areas, driveways, pedestrian and vehicular circulation systems, screening and landscaping, timing of development, and any other conditions the Planning Board may find appropriate.” This Planning Board review step has been removed in the updated UDO, to be discussed later tonight, in order to retain due process safeguards of the review within the quasi-judicial hearing. The Planning Board will discuss some of the facts of the proposal and the recommendations of the Technical Review Committee. The TRC meeting minutes and results were included in the Planning Board’s packets.

Michelle introduced a map of the property area. The subject property is 320 East Fort Macon Road, former location of bars named “The Gem”, “Crystals”, and “J Doggs”. It is within the Resort Services district, and immediately adjacent to the R2 (which is residential single-family and duplex) district to the south. Nearby districts include Resort Mixed Use and R-1(7) (single-family residential).

Michelle indicated some of the surrounding uses, much of which are residential. There are two hotels, a gas station, a church, and a marina in the vicinity as far as commercial uses are concerned. The Police Chief has asserted that re-opening a bar in this location, due to its proximity to the residential areas, could increase call volume to the Police Department by as much as 2%. In the summer, this can amount to 200 calls during the busy season. With a police department already stretched thin, this may be a burden on the Town's resources.

Porter asked for identification of other businesses in the area.

Michelle clarified that The Ice House and three residential houses were adjacent. She asked if there were any additional questions at that time from the Board. There being none, she introduced the present site plan. It was amended after the Technical Review Committee with input from the different department heads. She discussed specifics of what would change. Notably, parking would not be allowed over the septic field as it had been in the past.

Chamblee asked for the occupancy limit.

Michelle stated it would be 45-48 patrons based on the number of employees on duty.

General discussion was held about fencing and parking. The Fire Marshal was very adamant about adding a straight of way entrance in the front.

Chamblee asked if all the items listed from the Technical Review Committee had been dealt with.

Michelle stated that some items had not yet been identified. The TRC asked the applicant to complete a business inspection before the business actually opened. Some issues still linger from the TRC meeting.

General discussion was held on security compliance. Michelle noted that this would be difficult to enforce. Chamblee stated that the permit stays with the property, not the applicant. If the Planning Board doesn't require this of other businesses, it cannot require it of this specific business. Joyner noted that perhaps it could be made part of one of the conditions. Chamblee stated that we can put this in the conditions. If there ends up being any issues, the permit can be withdrawn. The Planning Board is there to determine what conditions will be recommended to the Board of Adjustment.

Porter commented that the current parking limits occupancy to 50, but at one point occupancy was 150. He was concerned that patrons will park in the right of way or in private driveways. There is a question of how to make parking compliant.

Michelle stated that occupancy has changed since then. By limiting occupancy, cars will also be limited.

Porter asked how this would be enforced.

Michelle stated that different ordinances would be enforced at that point. If the Fire Marshal is called, it would be \$500 per day if the business was over occupancy. Conditions set forth by the Planning Department, would be enforced by the same department. It should be enforceable by the individuals putting it forward, which makes it difficult to enforce, and why it didn't work before.

Chamblee commented that it needs to be treated like any other business. Out of fairness, investigations should only be made only if there is a complaint, just like any other property.

Michelle was concerned that the conditional use permit stays with the property, not the applicant. With well worded conditions, it can be put forward.

Ramsey asked about parking and parking signs within the residential areas, stating that it might hurt neighbors when they have guests. Michelle clarified that if signs were to be put up, it would mean absolutely no parking, affecting resident's guests along with business patrons.

Livengood commented that there are 6 bars in the area and there haven't been any complaints about these bars because they are in commercial areas. He suggested it be rezoned to residential.

Chamblee stated they will reach a recommendation for the conditional use permit based on current zoning.

Michelle pointed out Section 6.33 from the current UDO, which is as follows:

SECTION 6.33 TAVERNS, BARS, NIGHT CLUBS

- 2) Bars, Taverns and Night Clubs may be allowed in the RS zoning district with a Conditional Use Permit issued by the Board of Adjustment as outlined in Article 14, Section 14.3.
- 3) The applicant must prove they have taken measures to not be injurious to adjoining property, including, but not limited to:
 - A. Controlling and shielding of all lighting so as not to cast undue glare and light onto neighboring properties.
 - B. Controlling of all elements that produce noise, so as not to create nuisance conditions off-site.
 - C. Controlling and shielding of parking, ingress and egress, so as not to create a nuisance off-site.
 - D. Controlling and shielding of trash receptacles, so as not to create a nuisance offsite.
- 4) It shall be the responsibility of the applicant to prevent its patrons from causing a disturbance on public or private property in the vicinity of the applicant's establishment.

It covers the applicable standards for taverns, bars, and night clubs. It states that the applicant must prove that they have taken measures to not be injurious to adjoining property. While evidence proving these four points could be surmised from the application, site plan, or dealings with the applicant, written description of proof has not been supplied by the applicant. It will now be up to the Board of Adjustment to determine whether these four points have been provided.

Joyner asked what constitutes proof of noise control.

Michelle stated there was a conditional use permit for the same use in the same district last year. Because of the nature of the bar, there was not as much concern with the noise. Heavy reliance was placed upon the applicant's explanation of not wanting to play music. He did submit a part of his application that identified each of these items and addressed them.

General discussion is held on previous tenants and their conformity to conditional use permits.

Johnson asked if the current applicant has documental proof addressing each of the four items mentioned in Section 6.33 or was this a pre-mature meeting.

Ramsey questioned if the Planning Board could make it a condition that he addresses each of these items before the Board of Adjustment presentation.

The Board discussed their current options, which were to continue with the current meeting to make a recommendation along with stipulations to the Board of Adjustment or to table the discussion and look at the CUP as a later date. Chamblee stated that he would like to go ahead and continue with the meeting and hear what the public has to say.

The Board discussed whether to hear from the public or applicant first. The Board agreed to hear from the public first, then the applicant.

Michelle stated that the applicant agrees with the Planning Board's decision to hear from the public first.

Chamblee asked if there was anybody in the public who had not signed up to speak during the public hearing section of the meeting to do so at this point.

Ramsey asked if the applicant has seen the letters submitted from the public.

Michelle clarified that the applicant had received the same packet as the Planning Board members and that a copy of the letters will go into the minutes.

Johnson asked if the Planning Board's recommendations are based on the four points in section 6.33.

Michelle said that these were to be kept in mind. Based on public and department head comments, safety seems to be the main concern.

Ramsey stated that any conditions set forth by the Board would be in addition to and above the four standards mentioned in Section 6.33.

Brief discussion is held on Section 6.33 points and recommendations. Michelle noted that the Board of Adjustment will rely heavily on the Planning Board's input.

Porter made a motion to open the public hearing segment of the meeting at 6:37PM, seconded by Winbourne. Vote was unanimous, 6-0. Motion carried.

Darrel Lawrence of 309 East Fort Macon Road- Lawrence introduced himself as the owner of the Caribbe Inn, which is directly across the street from the property being discussed. Because he could not cover everything he would like to say within two minutes, he asked the Board to read over the letters. Lawrence stated that there is a problem with a bar in a residential area. He described himself as the chief historian because he lived across the street for 17 years from the property. They use his parking lot when there is overflow. They create a problem where he has to be there at all times to make sure they are not taking advantage of his customers. He is losing business because customers do not want to subject their families to the noise created by activity on this property. The other concern was enforcement of security measures. He wished that the Board would allow individuals more time to speak.

James Sprague of 306 East Fort Macon Road – Sprague's property is directly beside the property being discussed. Earlier, he sent a letter to the Board about what has been going on at the property. Mr. Sprague felt like the applicant could not meet the four conditions set forth in Section 6.33, especially concerning the noise level and the effect on property values. His family has owned 306 East Fort Macon Road since the 50's. These problems started and have continued since the first conditional use permit was allowed in 2009.

Jay Nichols of 320 East Fort Macon Road – Nichols would like for the building to be torn down to build condos. He has been trying to sell it. Otherwise, it is just sitting there, and there are not many allowed uses. He took over the property in 2001 when the occupancy was 257 at the time. They never had parking problems then, and doesn't think they will have parking problems now. He does see problems with the property's appearance. Mr. Hill, the current applicant, cares about the community and wants to bring in something for the local neighbors. He believes Mr. Hill will improve the building. They spent over \$40,000 is sound proofing the building in the early 2000's. He admitted there were several problems when it was Crystal's; however, he got the property back when Crystal's foreclosed. He has more control now that its back in his ownership; he wants a respectful business tenant. He wants to work with the Board and the neighborhood.

Donald McFarrin of 307 East Terminal Blvd- McFarrin owns the property directly behind the bar. Nothing has worked there previously. There have been parking problems and he doesn't believe you can control the noise level even with the sound proofing. His primary concern is safety. There are approximately 15 children in the neighborhood, and twice police have been to his house looking for bar patrons who were fight participants. There is no need for a bar in a residential neighborhood.

Nancy Brady of 204 East Bogue Blvd – Brady is against a bar in a residential neighborhood. There are children in the neighborhood at risk of drunk driving and noise disturbance. She has enough trouble with the hotel. Is there any way they can solicit the neighborhood to sign a petition?

The Planning Board advised her that the letters received so far act as a petition and that she does have the right to form a petition and submit it to the Board of Adjustment. That will not serve as a conditional proof, just further opinion of individuals who could not make it to the public hearing. The Board will take their comments, along with the applicant's, and make their recommendation to the Board of Adjustment.

Bruce Fortin 210 East Atlantic Blvd- Fortin lives between the Circle and the property in question. He has heard noise from all sorts of events, including the concerts at the Circle. If the Planning Board us going to impose security and noise conditions, it needs to impose it on every tavern, which currently doesn't happen. He doesn't believe it's considered a residential area since it sits on Hwy 58. There are businesses all along that street. Behind it might be a residential area, but the property itself is not residential. He has people park in his yard for concerts that the Town sponsors. If the

Planning Board is going to impose parking conditions, impose them on everyone. The applicant needs to be given a chance.

Daniel Hill, the applicant- Hill stated that he knows that previous businesses have been considered nuisances. He wants to give people in the community something to do by having open mic nights and the opportunity to play pool. He has met some of the people and the residences and he wants to give people something to do. He would like to have a chance to make a difference in this place.

Ramsey made a motion *to close* of the public hearing at 6:53PM, seconded by Porter. Vote was unanimous, 6-0. Motion carried.

Johnson asked the applicant if he thinks it would be feasible to run a bar with occupancy of only 48 patrons.

Hill responded yes.

Johnson asked the applicant about hours of operation and format.

Hill responded from 12:00PM-2:00AM, and beer and liquor.

Joyner asked if felt that he could meet the conditions in Section 6.33.

Hill responded yes. He has met with the department heads and asked for their input. With the owner's help, he feels he will accomplish this.

Chamblee thanked Mr. Hill, and stated at this time they will hear from each Planning Board member and then make a motion to vote on the recommendation.

Winbourne was concerned about the neighbors' complaints. It sounds like it hasn't been successful in the past. But if he can prove to the satisfaction to the Board of Adjustment that he can take care of those issues, they should have the opportunity to hear that and decide yay or nay.

Joyner agreed that there had been a lot of complaints in the past. He doubts that the applicant can meet the requirements, especially the noise and security requirements. The applicant won't be able to meet the conditions to his satisfaction, but it's up to the Board of Adjustment.

Livengood stated that the neighborhood was not built for commercial use. It's one of the largest permanent populations on the beach, and he doesn't think that a business that stays open until 2:00AM is good for little children or the neighborhood. He doesn't think this type of establishment with help with house values.

Johnson stated that based on the letters and stories; there is no way that he can support point 3 of Section 6.33. A business that serves liquor until 2:00AM will materially adversely effect the values of adjoining properties. In order for it to meet condition 3, the business would need to close at 10PM. This is not a business that should receive a conditional use permit.

Porter reminded everybody that the permit is tied to the property, not the applicant. There were no problems when Nichols owned it, then he sold it and there were problems. What if the applicant sells the property again, and the problems come back. We are talking about the use of this building in a residential neighborhood, not the applicant. His primary concern is safety for the neighborhood's children, not the noise issue. He cannot support the permit based on the safety issue.

Ramsey agreed with the safety concerns and the difficulty of enforcement. She doesn't think this is the best use of this property and does not support the conditional use permit.

Chamblee stated that the Board cannot deal with the parking off the property and the outside use off the property. This is a residential neighborhood, and he wouldn't want a bar in his neighborhood and has difficulty imposing that on someone else. There are lighting egress and fencing issues. This is a residential neighborhood and he doesn't think they should have an establishment that is opened to 2:30AM in a residential area.

Chamblee noted that all Planning Board and public comments will be sent to the Board of Adjustment.

Livengood made a motion *to recommend denial of the conditional use permit*, seconded by Ramsey and Johnson. Vote was unanimous, 6-0. Motion carried.

General questions and comments were made amongst the public and the Board about what constitutes "proof" for the conditions.

Chamblee ended this portion of the meeting at 7:08PM and the Planning Board took a break.

PRESENTATION AND REVIEW OF UDO UPDATE PUBLIC HEARING DRAFT

The Planning Board reconvened at 7:15PM and Chamblee introduced the 2nd item on the agenda.

Michelle stated that the Town has been working with CodeWright for over a year. The purpose of the UDO update is to make it more compliant with state legislation and more user friendly. The UDO update document has been online and handed out to the Planning Board. An errata sheet has been created and will also go to the Town Council. The update will incorporate input from a third party land use attorney, Tom Terrell, who has worked with Chad on previous projects.

Chad stated it was great to be back. Since they have already met to discuss this document three or four times, this meeting should move fairly quickly.

Joyner inquired if anyone from the public attended the pre-meeting question and answer session for the UDO.

Chad answered none.

Johnson asked if there were any online comments.

Michelle answered no.

Porter made a motion *to open* the public meeting at 7:19PM, seconded by Johnson. Vote was unanimous, 6-0. Motion carried.

James Sprague of 306 East Fort Macon Road- Sprague asked that the Planning Board remove the conditional use option from the resort services/mixed used high intensity zoning district. This will be exactly the same way it was before the UDO got changed.

General discussion is held on what businesses this would effect in different districts.

Porter made a motion *to close* the public hearing at 7:26PM, seconded by Joyner. Vote was unanimous, 6-0. Motion carried.

Chamblee stated that the Planning Board has heard a lot of this material before and asks to forgo the presentation and go straight to the errata sheet.

Chad confirmed that the presentation will be part of public record.

The Planning Board agreed to forgo the presentation and go straight to presentation of errata sheet.

Chad introduced the errata sheet, a document that tracks any changes made to the draft language during the adoption process. There are ten items on the errata sheet, most of them are simply typos. If a change were to be made to Resort Services, it will be added as item number 11 and it would be considered a substantive change.

Chad discussed the typos and general discussion was held about outside music, item 8 on the errata sheet.

Chamblee noted that there needs to be discussion held on mobile home parks. Michelle said there are a couple of issues that are substantive in nature that need to be discussed. In order to consider them thoroughly, they will be discussed at a later date. More general discussion is held on mobile home parks.

Porter made the motion *to enter onto the errata sheet the removal of conditional use of bars in the mixed use high intensity zoning district formerly called resort services in the principal use table in section 18.4.1 on page 4-45*, seconded by Ramsey. Vote was unanimous, 6-0. Motion carried.

Joyner made the motion *to recommend adoption of the UDO update as amended with the errata sheet*, seconded by Ramsey. Vote was unanimous, 6-0. Motion carried.

The unanimous vote of the UDO adoption prompted the Planning Board Chairman to sign the statement of consistency.

Chad thanked the Planning Board for their time and the Planning Board thanked Chad for his.

ADJOURNMENT

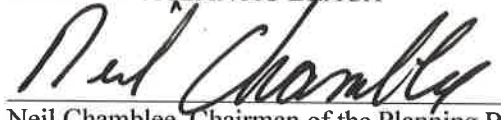
There being no further business Ramsey made the motion *to close* the meeting at 7:49PM, seconded by Livengood. Vote was unanimous, 6-0. Motion carried.

These minutes were approved at the July 11, 2017 meeting of the Atlantic Beach Planning Board.

ATTEST:


Megan Hunter - Planning Board Secretary

TOWN OF ATLANTIC BEACH


Neil Chamblee, Chairman of the Planning Board