



**Minutes  
Town of Atlantic Beach  
Board of Adjustment Meeting  
June 19, 2017**

**Members Present**

John Lotspih  
Vada Palma  
Fred Dean, Alternate  
Rich Johnson, Alternate  
Curt Winbourne, Alternate

**Members Absent**

John Kurek, Chair  
David Cox  
Gary Plough, Vice Chair  
Cynthia Chamblee, Alternate

**Others Present**

Derek Taylor, Town Attorney  
Michelle Shreve, Planner  
Katrina Tyer, Clerk  
John Harrell, Inspector  
Jeff Harvey, Police Chief  
Jason Hutchinson, Police Major  
Michael Simpson, Fire Marshal  
Arrington Moore, Management Assistant  
Neil Chamblee, Planning Board Chairman  
Norm Livengood, Planning Board Member  
Rich Porter, Planning Board Member  
Eddie Briley, Councilmember (arrived 8:45pm)

Attorney Taylor stated that since the Chairman and Vice-Chairman were absent, an acting Chair needed to be selected for tonight's meeting. He then asked three Alternates to come forward and serve: Curt Winbourne, Rich Johnson and Fred Dean.

Attorney Taylor asked for a nomination for Chairman for tonight's meeting. Winbourne nominated Vada Palma to serve as Chairman. Seconded by Lotspih. Lotspih made a motion *to appoint by acclamation* Vada Palma to serve as Chairman for tonight's meeting. Seconded by Winbourne. Vote was unanimous. He then turned the meeting over to Palma.

**CALL TO ORDER**

Palma called the meeting to order at 7:01pm and introduced those seated on the board.

Johnson made a motion *to excuse* Chairman Kurek, Vice Chairman Plough and Alternate Cynthia Chamblee. Seconded by Lotspih. Vote was unanimous. Clerk's Note: David Cox was not present.

**OATHS OF OFFICE Vada Palma, John Lotspih, and Gary Plough**

Oaths of Office were administered by the Clerk to Vada Palma and John Lotspih. Gary Plough's Oath will be administered at the next meeting. They were re-appointed by Council on May 22, 2017.

**APPROVAL OF MINUTES**

Winbourne made a motion *to approve* the May 1, 2017 Minutes. Seconded by Lotspih. Vote was unanimous. Motion carried.

**CASE VAR-17-03 BOGUE BANKS BAPTIST CHURCH**

**Opening remarks and swearing in of witnesses**

Palma introduced the request by Bogue Banks Baptist Church, 1417 West Fort Macon Road, requesting a variance to install a new welcome monument sign that is 22 square feet bigger and 16 inches taller than would be allowed per Section 11.5.1 of the UDO.

There were not any conflicts or objections from the seated members on the Board. Each board member confirmed individually they did not have a financial interest, personal interest, business interest, fixed opinion, previous conversations or correspondence, or have any information or special knowledge in the case.

Attorney Taylor asked if the applicants had any objections to any member of the Board member now seated. All confirmed No.

The following were sworn in by Town Clerk Katrina:  
James Fitz, 211 Arendell Street, Morehead City  
Michelle Shreve, Town Planner

### **Public Hearing**

Palma opened the public hearing. The time was 7:09pm.

### **Staff Presentation – Michelle Shreve**

This variance request by Cathy Black, James Fitts, and Denise Warbritton, representatives of Bogue Banks Baptist Church, is to install a new monument sign that is 22 square feet bigger and 16 inches taller than Section 11.5.1 of the UDO would allow. This property, located at 1417 West Fort Macon Road, is within the Resort Services zoning district. The current UDO regards this district as residential in nature, so the sign ordinances only allow 20 square feet of sign face on a sign that is no more than seven feet in height.

The existing sign serving this property is 12 feet tall, which includes the six foot tall sign on top of the six foot tall pedestal. The sign is 10 feet wide, which gives a sign face of 60 square feet. The applicants plan to place the sign in the same location as the existing sign.

The proposed sign is an 8 feet and 4 inches tall brick structure to hold the sign, which has a face area of 42 square feet. This is 16 inches too tall and 22 square feet too big. The applicants request this additional 16 inches in height and 22 square feet of sign face in order to construct this sign.

The property is located along the section of West Fort Macon Road that is 35mph in season and 45mph off-season. High traffic roads typically have bigger signs, especially institutional uses that serve a large number of people.

Staff confirms the following based on the Variance Check List:

- a) Proper notice of this public hearing was given to adjoining property owners. Letters notifying the 19 property owners within 150 feet of the subject property were sent on May 30, and a sign notifying the public of this hearing was posted on the property the next day.
- b) The variance does not result in the extension of a non-conforming situation in, or authorize the initiation of a nonconforming use of land. Churches are permitted by-right within the Resort Services zoning district.
- c) If the applicant complies strictly with the provisions of the Ordinance, they will suffer substantial hardship. The existing sign is falling into disrepair, but replacing it with a sign that conforms with Section 11.5.1 would limit the Church's ability to advertise services along a busy road.
- d) The hardship relates to the applicant's land, rather than personal circumstances, such as shape, size, or unusual characteristics. This property has a street frontage along one of the major corridors of Town without being able to build a sign like in the business district, because it is within a residential-type district.
- e) The hardship is not a result of the applicant's own actions. Staff is not aware of any action the applicant or property owner could have taken to create the hardship.
- f) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. Staff suggests that granting this variance would not adversely affect public safety and would be consistent with the spirit, purpose, and intent of the UDO.

Attorney Taylor confirmed that if the Church was in a commercial zone they could build bigger than what they are currently asking for.

Michelle confirmed the new sign would have to meet building code and wind requirements, if applicable.

#### **Applicant Presentation – James Fitts, Kathy Black, and/or Denise Warbritton**

Mr. Fitz thanked the board for listening to their request. The current sign is in need of great repair. He feels the new sign will be more noticeable and provide them the opportunity to advertise more Church events. The new sign inside the brick will be 8 feet wide instead of the current 10 feet and the new sign will be 63 inches high instead of the current 72 inches. The brick foundation will be more substantial during a hurricane. The sign will be made with the same brick they had leftover from building the Church and paid for by an anonymous donation.

The applicant did not have any additional material to submit in support of the application. He verified the contractor had paperwork confirming it was designed to current codes.

No one was present in opposition.

Palma closed the public hearing. The time was 7:23pm.

#### **Board of Adjustment Discussion and Evaluation**

Palma polled the board members and each agreed the following criteria have been met:

- 1) Proper notice was given to adjoining property owners of the holding of the public hearing to consider the variance, pursuant to Michelle's testimony. Vote was 5-0.
- 2) The variance does not result in the extension of a non-conforming situation in, or authorize the ignition of a non-conforming use of land, pursuant to Planner Shreve and applicant's testimony. The Church is in a RS zone, this is allowed in this zone. Vote was 5-0.
- 3) If the applicant complies strictly with the Ordinance, they will suffer substantial hardship. Vote was 4-1. Palma did not feel there was any particular hardship to the applicant. Testimony provided by the Town and the applicant was the sign is on a roadway with a 35/45 mph speed limit and currently too small to be viewed by vehicular traffic. Also, the current sign is in jeopardy due to wear and tear from weather and needs to be replaced for safety.
- 4) The hardship relates to the applicant's land, rather than personal circumstances. Vote was 5-0.
- 5) The hardship is a result of personal circumstances suffered only by the applicant, rather than neighbors or the general public. Due to the location of the sign in a bend in the road with forest on both sides it is a hardship. This is uncontroverted due to no one testifying against the project. Vote was 5-0.
- 6) The hardship is not a result of the applicant's own actions, such as shape, size, or unusual characteristics. Vote was 5-0.
- 7) The variance is consistent with the spirit, purpose and intent of the ordinance, such as public safety is secured, and substantial justice is achieved. Vote was 5-0. Based upon Michelle's testimony.

The Board has found all of the requirements for a Variance have been met. Lotspih made a motion *to grant* the Variance Request to install a new monument sign that is 22 square feet bigger and 16 inches taller than Section 11.5.1 of the Unified Development Ordinance would allow at 1417 West Fort Macon Road. Seconded by Winbourne. Vote was unanimous, 5-0.

## **CASE CUP-17-01 "The Hill" (320 East Fort Macon Road)**

### **Opening remarks and swearing in of witnesses**

Daniel Hill has proposed to establish a bar/private club at 320 East Fort Macon Road. This is in the Resort Services zoning district.

Attorney Taylor advised the applicant that two of the current board members are also Planning Board members (Rich Johnson and Curt Winbourne). The Planning Board made a recommendation of denial at their last meeting even though they are not allowed to do make that motion/recommendation and should only provide a list of recommendations for the Board of Adjustment to consider. The Board will hear those recommendations tonight. Either way, Johnson and Winbourne have already heard this case and have prior knowledge.

The applicant initially requested a new meeting date. Then after Attorney Taylor instructed the board on the next meeting date and how to continue the matter, the applicant stated he would rather proceed now and rescinded his request to continue the case. He did not have a conflict with any of the serving board members.

There were not any conflicts or objections from the seated members on the Board. Each board member confirmed individually they did not have a financial interest, personal interest, business interest, fixed opinion, previous conversations or correspondence, or have any information or special knowledge in the case.

Attorney Taylor asked the two Planning Board members to state they are open minded, will not consider anything they heard during the Planning Board meeting and will base their decision fairly and only on the evidence presented tonight. Both confirmed they could and would.

Attorney Taylor asked the applicant again if he had any objections to any member of the Board member now seated. Mr. Hill confirmed No.

The following were sworn in by Town Clerk Katrina:

Dan Hill, 301 West Atlantic Blvd., Atlantic Beach  
Neil Chamblee, 117 Pond Drive, Planning Board Chairman  
Mike Simpson, Town of Atlantic Beach Fire Marshal  
Jay Nichols, 4180 Dudley Grant, Greenville, NC - Property Owner

### **Public Hearing**

Palma opened the public hearing. The time was 7:40pm.

### **Staff Presentation – Michelle Shreve**

Michelle stated this case is a Conditional Use Permit proposal to establish a bar/club at 320 East Fort Macon Road by Dan Hill. This property is in the Resort Services District, and as such the tavern/bar use type requires a Conditional Use Permit to operate. A Conditional Use Permit was issued in 2010, but due to abandonment of the use in Spring 2015 and no effort made to revive that use within 180 days, the use was rendered nonconforming per UDO Section 17.5.

It is important to remember throughout the Conditional Use Permit process that the CUP is issued to the property, not the applicant or property owner, as was evident with the conversion of Crystals to The Gem under one CUP. Conditions should be applicable to the site and use with the knowledge that any tenant or property owner could utilize it.

In accordance with Section 14.3.5(E): The Board of Adjustment shall issue a conditional use permit if it has evaluated an application through a quasi-judicial process and determined that:

1. The proposed use will have either a minimal effect or positive effect on the public health or safety;
2. The use meets all required conditions and specifications;
3. The proposed use will have no material adverse effect on the value of adjoining or abutting properties unless the use is a public necessity; and
4. The proposed use is in harmony with the Town Land Use Plan and/or other plans adopted by the Town Council.

The location of the Conditional Use Permit property is the site of the former Gem, Crystals, and J Doggs bars. The property has been vacant for over two years now, with only one request for development information prior to Mr. Hill's application for Conditional Use Permit.

This property is located on the east end of Town on the corner of Wilson Avenue and East Fort Macon Road. Along Fort Macon Road, there are hotels, a gas station, a church, and a marina. Behind the property on East Bogue is a residential neighborhood. The properties neighboring along East Fort Macon Road are also Resort Services, a type of mixed-use district, but the property abuts the R2 residential zoning district.

The Technical Review Committee met on May 24 to discuss the ordinances and standards regarding the project with the applicant. During that meeting, the applicant agreed to a preliminary Business Registration inspection by the Building Inspector, Fire Marshal, Police Major, and Michelle. The Fire Marshal's reports from this inspection are included.

The Planning Board met on June 6, during which discussion and a public hearing was held. That public hearing was advertised in accordance with UDO requirements. On May 15, 119 letters were mailed to property owners within 500 feet of the subject property describing the case and review process. A sign was posted on the property that day and remains there now. Advertisement for tonight's Board of Adjustment meeting included another 119 letters to the same property owners. Newspaper advertisements were published for both meetings. Staff confirms that the proper notification process was completed.

The site plan was updated based on information supplied by the applicant and proposed improvements by the TRC.

- Inserted landscaping, trash receptacle screening, and located the 18 parking spaces in accordance with UDO standards.
- TRC recommend keeping the majority of the fence to continue screening the parking lot and proposed updated outdoor smoking area, even though the fence is within the Town's right-of-way.
- The Fire and Police Departments suggested the removal of the fence directly behind the building in order to remove the "alley" that was the hot spot for many issues.
- Additional lighting was also recommended in order to maintain safety for patrons, but the lighting should only utilized during business hours, and be angled so that the light does not spill over the property line into the adjacent residential areas, to the maximum extent practicable.
- The Police Chief recommended that the center of the three points of ingress & egress be closed.
- The Fire Marshal and Building Inspector did a preliminary Business Registration Inspection.
- The Fire Marshal proposed a different entrance & exit reconfiguration in order to bring the building into compliance for ease of access by emergency personnel. This is shown in his report but not in the site plan.
- The applicant has been very receptive to recommendations of staff and seems to be willing to carry out modifications and conditions that would bring this project into compliance.

The Planning Board reviewed this case and found some issues:

- The proximity of the property to a residential zoning district. A high intensity use type adjacent to a low intensity type district tends to present issues, regardless of the property owner, neighborhood, or city that it's located in.
- The required renovations prior to business operation. The Fire Marshal's report lists typical repairs or upgrades that the business owner would have to bring into compliance before operation, regardless of approval process.

Section 6.33 of the UDO sets out standards that must be met or exceeded by a tavern, bar, or nightclub. The applicant did not submit written descriptions of compliance with these requirements. Staff suggests that:

- The impact of lighting on the surrounding areas will be similar to those of the previous bar/club uses of this business, though this could change due to the placement of timed lighting recommended by the TRC; a cone lighting similar to what homeowners use in their garages.
- The impact of the noise will be fairly equal to the preexisting noise levels of the previous bar/club, and also equal to any other bar or club in Atlantic Beach.
- The impact of the traffic would be less than the traffic of the previous business because the number of parking spaces gives occupancy of 48 patrons, the former business was given occupancy of 150 patrons.
- And the impact of the refuse collection areas has the potential to be less than the refuse of the previous bar/club, because the applicant will be required to deliberately screen the trash and recycling receptacles on the right side of the property.

Last year, a Conditional Use Permit for a bar now named The Growler had a condition to limit the business hours, which we have since learned is essentially unenforceable due to the state's ABC regulations on hours, so that should not be considered as a condition. The screening of refuse, occupancy and parking spaces, location and timing of exterior lighting, location and type of landscaping, number and location of points of ingress & egress, and other standards-related conditions are possible.

The TRC and Planning Board agree that conditions should be enforceable by the Planning & Inspections Department. Conditions that would be enforced by the Police or Fire Departments should not be considered, because additional burden on those departments means that we are not taking responsibility for our own work.

While the Planning Board did not outright recommend any conditions, the compiled conditions based on their discussion, TRC discussion, the original application, and staff reports are as follows:

- Install improvements as shown on staff's recommended site plan
  - Landscaping as required in Article 10 of the UDO
  - Screening as required in Article 7 of the UDO
  - Parking as required by Article 9 of the UDO
  - Ingress/egress as recommended by Police Chief
  - Lighting as required in Article 9 of the UDO and recommended by Police Chief
- Maximum occupancy of 48, based on 18 parking spaces and 1-2 employees
- Construction of conforming entrance in accordance with the Fire Marshal's suggestion
- No outdoor live entertainment permitted

A condition was suggested that would allow the CUP to be temporarily rescinded in order to give time to bring the property into compliance, but after review with the Town Attorney, that does not seem to be viable. The Board of Adjustment can, however, rescind the Conditional Use Permit if it finds that the use no longer meets the points of 14.3.5(E).

Attorney Taylor explained if the applicant has satisfied the burden of providing all the evidence to meet the criteria listed in the check list then the CUP must be granted.

Johnson asked to confirm the definition of abutting and adjoining. Neither term is defined in the current UDO so Attorney Taylor advised they must use the common dictionary definition.

Palma inquired about the low occupancy allowance. There was open discussion about how parking allowance is determined. The Fire Marshal occupancy limits are different than the zoning requirements on parking. If the zoning requirements for parking are violated, the CUP can be revoked.

The board had open discussion with Michelle regarding the parking requirements and the allotted spaces. Ingress and egress was discussed concerning pulling out on Fort Macon Road.

Per Attorney Taylor, Michelle confirmed she had the documents required in the UDO for site plan submittal. What was not included in the original submission was updated and complied with in the application.

The Planning Department Report was submitted as evidence without objection.

#### **Planning Board Presentation – Neil Chamblee**

Neil Chamblee, Planning Board Chairman, recapped the Planning Board meeting. It was the boards understanding that they either provide recommendations for or denial of the CUP. They looked at the site plan, heard from the owner, applicant, town and public opinion. They took the statements into account. Most of the public comments were negative. They did not see how the current considerations on the permit could be managed by the applicant based on noise, light trespass, vehicular traffic and parking. The public, police and fire department stated there were a lot of complaints and on-site visits from neighbors. The board did not feel they could put legal restrictions on the permit to address the issues and still allow them to operate. Therefore, their recommendation to this board was to deny the permit. They also unanimously approved a motion for a statement to be put on the Errata Sheet for the UDO update to remove CUPs from the mixed used high intensity zoning district, formally called Resort Services. This update would preclude this being an issue in this area in the future.

Attorney Taylor reminded the Board they are to follow the current UDO and review the application under current laws.

Attorney Taylor asked Chamblee if the Planning Board determined any conditions for denying the permit. The Planning Board came up with questions concerning light pollution, ingress/egress and noise pollution, but they were unable to provide any conditions to meet the requirements. All of the solutions put burden on the ABPD and ABFD.

He reminded the Board they should disregard the Planning Board recommendation to deny the permit and only consider the conditions they recommend, of which there were none.

#### **Staff Presentation - Mike Simpson, Fire Marshal**

Deputy Chief Simpson explained to the audience the role of the Technical Review Committee. After the TRC meeting, the applicant requested him and Police Major Hutchinson visit the site. This is not a typical review for the TRC, but the applicant wanted to have a chance to address some of the issues regarding light, noise, etc.

The visit found there needs to be upgrades to exit lights, address exposed wiring, an entrance door that needs to be repaired, repair extensive water damage to the interior and exterior of the building. Anyone will have to address these issues before opening a business. The main issue is the entrances to the building. Both entrances/exits are non-conforming in that they are double doors causing issues for police and fire entry and patron exit. They were

originally designed this way to control noise. The applicant seemed to be willing to make the changes suggested. The Fire Department would like to ask board to make changes of these exits to conform to current fire and building code as a condition of the permit.

He discussed the parking and occupancy requirements and recommended to use the UDO calculation for the number of patrons based on the allowable parking. Any inspections and violations will be handled by the fire department or the planning and zoning officer as needed.

Applicant asked about parking requirements and discussed the issue of lack of parking on the beach. Michelle advised him to direct questions about parking to her, not the Fire Marshal.

Attorney Taylor excused Major Hutchinson, Fire Marshal Simpson and Inspector Harrell. The Police Department recommendations are included in the agenda packet and available for public inspection.

### **Applicant Presentation – Daniel Hill**

The applicant responded he did have a copy of the checklist. He asked to speak at the end. Attorney Taylor advised he needed to speak first and present his case.

He has lived in Atlantic Beach for 8 years and wants to open a place for people and families to go.

Attorney Taylor asked him to go through each of the requirements for the CUP and explain each one in detail. Property owner Jay Nichols asked if he could assist and answer the questions. Attorney Taylor allowed. He wants to comply with everything the Town has asked and to please the neighbors. Previously he asked a neighbor her favorite color and painted the building that color. He discussed the previous occupants and how he wants good tenants. He has had several people contact him and want to rent the building. He is selective over who he will rent to, but he would like to see the building occupied. He understands this is a great location for new condos, but at this time in his life he cannot afford that. He asked to let this building remain what it has been the past 40 years, a bar. He asked the Board to approve this so he can get someone in the building and make the upgrades so this is no longer a vacant building and will look good for the Town.

Attorney Taylor reminded Mr. Nichols that Mr. Hill needed to state how he intended to meet the requirements for this CUP and asked him again to address each item on the list.

Michelle reminded the applicant he must prove he has taken measures to not be injurious to adjoining property, including, but not limited to:

- 1. Controlling and shielding of all lighting so as not to cast undue glare and light onto neighboring properties.*

Mr. Hill responded there is poor lighting on the property and there are two street lights. He is going to have motion lights and lighting on the corner. The lighting on the exterior will be so no one will linger in the parking lot. Michelle reviewed the staff suggested lighting.

Attorney Taylor asked applicant if he intended to follow staff's recommended plan for lighting and contain all light within the developed area of the site. Mr. Hill confirmed.

Mr. Nichols stated that all of these requirements are listed in the rental agreement.

- 2. Controlling of all elements that produce noise, so as not to create nuisance conditions off-site.*

Mr. Hill stated he plans to work with the Fire Marshal to confirm the entrances are proper. The outdoor smoking area will be the only outside area open after 11:00pm.



Mr. Nichols explained the doors were designed to keep the sound in the building and prevent it from bleeding outside.

*3. Controlling and shielding of parking, ingress and egress, so as not to create a nuisance off-site.*

Mr. Nichols feels there is plenty of parking available. Parking has not been an issue the past 10 years, mainly due to cab service and patrons walking. He feels there is plenty of room for parking without backing onto Highway 58.

Lotspih inquired about plans for controlling sound. Mr. Nichols stated it was done for the previous owner. The stage was moved so the noise wall was not on Bogue Blvd. He will not rent to anyone who intends to play boom boom and dance music.

Attorney Taylor led Mr. Nichols back to the parking issue and inquired again about closing an entrance. He feels the 37 foot drive should be closed due to runoff issues. The middle entrance would be more helpful for taxis. He wants to work with the Town and understands the cleanup effort the Town has to do to remove the sediment that runs off onto Highway 58.

Winbourne would like the ingress/egress to be fully addressed. Mr. Nichols stated would close whatever the Town recommends.

Attorney Taylor asked the applicant/owner how he intended to address landscaping and if he agreed with the plan presented by staff. Mr. Nichols stated applicant promised to make the site aesthetically pleasing. Michelle explained that we have to have firm conditions, not promises.

*4. Controlling and shielding of trash receptacles, so as not to create a nuisance offsite.*

Michelle noted the trash receptacles were presented to be behind a fence. Mr. Nichols stated the plan is to only sell can beers and a local man, Clarence, will pick up for recycling.

Johnson asked the owner how he intends to control this building for possible ownerships or permits. Owner feels no one that can afford this building will buy it for a nightclub, they will buy it for condos. Owner agrees that if the noise is loud and an issue for surrounding neighbors, the police can enforce.

Attorney Taylor asked applicant if he adopted the diagram as the site plan and intentions. Mr. Hill confirmed yes.

**Citizen Comments (In Favor)**

Brett Nation, 117 Pelican Drive

He likes the small cozy idea of this bar. He has known Dan a long time and thinks he's a great guy. His daughter is 18 years old and needs somewhere to go to listen to music, not just play putt putt. This will be a place for local music and karaoke.

Josh Hilton, 219 West Atlantic

Dan is a great man, he treats everyone with respect. He has a lot of great ideas. He is a great carpenter who can rebuild things and repair. Thinks he should be given a shot, he deserves it.

Derek made sure the Board understood there are four total things to prove. He reminded them this was the time to ask the applicant any questions they might have.

Johnson pointed out he did not hear anything relative to point one and three (lighting and parking).

In reference to Number 1, Mr. Nichols feels the proposed site plan will have a positive effect on public safety. At this time, he is not going to remove the fence from the back of the property along East Bogue because it was a condition of the previous CUP. If the Town requires it to be removed now he will. He thinks it will be good to open the property up.

In reference to Number 3, he has told Mr. Hill he needs to have a working relationship with the abutting property owners, especially CaribeInn. Everyone but the abutting property owner knew the bar was there when they bought their property.

### **Citizen Comments (In Opposition)**

James Sprague, 306 East Fort Macon Road

His family has owned this property since the 50s, at that time the lot was just a sand dune. The biggest problem is noise level, it cannot be controlled especially outside on the smoking deck. When people leave they are disruptive in the parking lot waiting on cabs, etc. The applicant may be the best guy ever, but he is worried about future owners and businesses. The loud music is a huge factor late at night. Since the building has been vacant, there is not a problem with noise and trash in yard. He does not feel that the conditions in the application have been met. He was a code official for 30 years, so he understands code requirements.

Attorney Taylor reminded the board that property values and traffic cannot be considered testimony, unless provided by an expert.

Lotspih inquired again about the definition of abutting property in reference to sound traveling. The definitions are not in our current UDO, so we use the Webster definition. Per Attorney Taylor, abut means next to or having a common boundary with. Adjoining and abutting are similar the same.

Winbourne does not see how this board can address Number 3 because there are not any experts at this hearing. Attorney Taylor confirmed that is correct, the burden was on the applicant to prove prior to hearing opposition.

Nancy Grady, 204 East Bogue Blvd.

She does not feel the applicant has answered any of the questions on how he intends to fulfill the conditions of the permit.

Darrell Lawrence, 309 East Fort Macon Road. Owner of CaribeInn.

He is against this permit based on the sorted history we have on this place. A lot of things were promised under the last permit that were never done. Trash and bottles were a huge problem before. From across the street, he sees everything that goes on over there. The ABPD received 320 calls, meaning they had to go there that many times. That does not include the activity that never got called in. A lot of people are being annoyed. Article 6 reads the applicant must control all elements that produce noise, they cannot. They also cannot prevent patrons from causing a disturbance on public or private property. He is not saying they did not try to prevent it, but they physically cannot do it. He questions who will watch these people when they leave the bar, you cannot control personal behavior after they have been drinking. He has not heard one thing that proves a minimal effect or positive effect on public health. If this board passes this they will be affecting people's lives for years. It is a major effect to keep people up late at night. Unauthorized parking and people leaving the bar, affects his business. His patrons don't want to return, it affects his business. It is not a positive effect in this community for a bar to be in this location. Four new bars have opened up recently and to his knowledge there have not been any problems because these bars are opened up in a location where it is appropriate.

Mr. Nichols had two questions/points, he stated that he thought this bar would help his hotel. Mr. Lawrence does not feel he benefits from an uncontrolled business. Mr. Nichols asked how many times he would call the ABPD. Mr. Lawrence stated he would call the ABPD as many times as necessary, sometimes three times a night.

Josh Hilton (from audience) asked if he had ever had trouble in his business, and as a business owner he should understand that you cannot control.

Bruce McFerren, 307 East Terminal Blvd.

The burden to prove the eight factors was on the applicant, these have not been met. New residential homes have been built since this was last opened. He reviewed each factor and asked if any proof had been given. He does not feel the applicant has proven these.

Palma closed the public hearing. The time was 9:55pm.

### **Board of Adjustment Discussion and Evaluation**

The Board members discussed the following criteria, which have to be met for issuance of the CUP according to UDO Section 14.3.5(E):

- 1) The proposed use will have either a minimal effect or positive effect on the public health or safety

Johnson did not hear any evidence to prove this requirement. Noise is the issue that bothers him the most, something can be done with trash and lighting.

Lotspih stated they did not develop their own plan, they looked at the plan the Town proposed and said, we will do that.

Winbourne is as pro-business as anyone. His heart is feeling this, but he just cannot see how they have met Number 1. He is not convinced that long term this will have a minimal effect.

Dean feels the reduced occupancy will probably make it better than it was before.

Attorney Taylor reminded the Board, Council has approved to allow bars in this area. The proposed bar is not the issue, it is did the applicant prove in their evidence that there will be a minimal effect on public health or safety.

- 2) The use meets all required conditions and specifications

Winbourne noted the applicant did state they would meet the ingress/egress and lighting requirements on the proposed site plan.

Dean feels focalization of those commitments are confirmed as real deliverables in this context as opposed to the printed plan presented.

- 3) The proposed use will have no material adverse effect on the value of adjoining or abutting properties unless the use is a public necessity

Attorney Taylor stated to strike 'public necessity', it does not qualify.

Johnson feels there was zero testimony.

Lotspih feels there is zero testimony.

Winbourne noted it was made clear it was the applicant's responsibility to prove it will not have an adverse effect and there was nothing from the application on that.

- 4) The proposed use is in harmony with the Town Land Use Plan and/or other plans adopted by the Town Council

Attorney Taylor confirmed this was proved.

Michelle confirmed proper notice was given to adjoining property owners of the public hearing.

Attorney Taylor advised the board a motion was needed, and the members should then vote accordingly.

Lotspih made a motion to grant the Conditional Use Permit to operate a bar/club in the Resort Services Zoning District located at the property addressed at 320 East For Macon Road, including conditions set by the Board. Seconded by Dean. Vote was 0 in favor, 5 in opposition, therefore the application is denied.

Each member then stated their reason for opposition:

Lotspih stated they did not prove there would be a minimal effect on the public safety. They did not prove the value of the adjoining property would improve.

Winbourne does not feel they proved Number 3, no one spoke on it. It was a close call on Number 1, but he does not feel it was met.

Dean did not hear any evidence to prove Number 1 or 3.

Johnson did not feel any evidence was presented on Number 1 or 3.

Palma feels they had a strong case on Number 2 and 4, but it bothered her about the adjacent properties. She just felt they didn't present a preponderance of evidence on those two.

### ADJOURNMENT

There being no further business the meeting adjourned. The time was 10:06p.m.

These minutes were approved at the March 19, 2018 meeting of the Atlantic Beach Board of Adjustment.

Approved by:

  
Wade Palma  
Acting Chair

  
Katrina Tyer, Town Clerk