



**Minutes**  
**Town of Atlantic Beach-Board of Adjustment Meeting**  
**October 19, 2020**  
**Town Hall Boardroom-125 West Fort Macon Road**  
**Atlantic Beach, NC 28512**

**Members Present**

Eddie Briley  
Michael Bosse  
Vada Palma  
Harrison Smith  
Fred Dean, Alternate

**Members Absent**

Norm Livengood  
Curt Winbourne, Alternate

**Others Present**

Derek Taylor, Town Attorney  
Betty Odham, Planning Admin  
Michelle Eitner, Director of Planning  
Chase Cullipher, Engineer  
David Walker, Town Manager  
Mayor Trace Cooper

**CALL TO ORDER**

Chairman Briley called the meeting to order at 6:00pm and the members seated on the board introduced themselves.

**EXCUSE ABSENT MEMBERS**

Palma made a motion *to excuse* Norm Livengood due to sickness. Seconded by Smith. Vote was unanimous, 5-0. Alternate member Fred Dean was dismissed.

**SUP- 20-1: Public Safety/Admin Complex**

**Opening remarks and swearing in of witnesses**

Chairman Briley began the meeting by stating: The North Carolina State Supreme Court requires this Board base its decisions only on testimony given under oath. Any other comments can only be used as arguments and not as evidence in the case being presented. This is a quasi-judicial hearing and as such will be conducted according to special rules that must be followed. This citizen volunteer Board cannot make ordinances or change them, but can only act on the ordinances that have been voted on and approved by the Town Council and interpret them based on evidence presented for each case.

Chairman Briley polled the board members to reveal possible conflicts and to withdraw from the case if necessary. Each board member confirmed they did not have a financial interest, personal interest or fixed opinion in the case. They have not had any conversations or received any correspondence regarding this matter prior to this hearing, other than the information packets provided by staff. They do not have any information or special knowledge about this case that may not come out at the hearing.

Chairman Briley noted that he had a conversation, with Council member Austin Waters earlier in the afternoon, but noted it was only to inform him there was a meeting, nothing else.

Attorney Taylor and the parties associated with the case confirmed they did not have any objections to any of the seated board members.

Chase Cullipher, Mayor Trace Cooper and Michelle Eitner were sworn in as witnesses by Betty Odham.

Chairman Briley continued: In tonight's hearing, we will first hear from Town Staff, and then from the applicant and then from other sworn witnesses that may be in favor or opposition of the application. The Town Staff, applicant, and other sworn witnesses shall give testimony which shall include those requirements listed in the Special Use Permit evaluation checklist which is modeled after the Required Findings for Special Use Permits in the UDO. A copy of that evaluation list is available in the back of the room for witnesses to review prior to their testimony. The applicant has the initial burden of proving every item on the Special Use Permit Required Findings by competent, material, and substantial evidence, and the Board will review such evidence in its deliberations and determination following all testimony. Applicants will be expected to address each item on the list. Parties will be provided an opportunity to ask questions of witnesses after the witness testifies. If you want the Board to receive into evidence such items as reports, maps, writings, or exhibits, the witness who is familiar with the evidence should ask that it be introduced during or at the end of his or her testimony.

Attorneys should not give factual testimony unless they are sworn in, but they may summarize their client's anticipated testimony and case. Before you begin your testimony, a witness must clearly identify themselves for the record by stating their name and address. Witnesses are cautioned that this Board may only consider "competent" evidence. The term "competent evidence," means evidence that appears to be sufficiently trustworthy for us to rely upon it. We will not consider hearsay evidence regarding important facts. Hearsay is repeating a statement, written or oral, made by someone that is not here tonight for us to ask questions of. The witnesses must focus their testimony toward those requirements listed in the special use permit required findings that they believe have not been met, offering any testimony and competent, material, and substantial evidence they may have to support their position. The Board will consider such testimony and evidence in its deliberations and determination following the hearing. Opinion testimony of non-expert witnesses on matters requiring expertise is not competent evidence. Examples of evidence that must be presented by an expert includes testimony regarding how the use of property in a particular way would affect the value of other property or how an increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety. Unless this Board decides on the record that testimony or other evidence is not competent for our consideration, if an opposing party fails to object to submission of any testimony or other evidence, the Board may accept it as competent evidence and consider it in its determinations. If an opposing party objects, the Board will act upon the objection by majority vote. North Carolina General Statutes require that the applicant receive an affirmative majority vote of this Board in order to receive approval of any Special Use Permit application. In order for the Board to approve the requested Special Use Permit, the Board has to have found that each of the required findings for a Special Use Permit have been met.

Briley continued, SUP-20-1 Public Safety/Admin Complex-Chase Cullipher of The Cullipher Group, agent for the Town of Atlantic Beach, requests a Special Use Permit to establish the new Public Safety/Administration Complex at 125 West Fort Macon Road in place of the existing Town Hall, Police Department, Fire Department, and former Public Works Department facilities.

Chairman Briley *opened* the hearing at 6:24pm.

#### **Staff Presentation**

Michelle Eitner, Planning and Inspections Director, began her presentation by reviewing the the special use permit procedures. A special use permit is a use that may be appropriate in a zoning district, but because of its nature, extent and external effects, requires special consideration of its location, design, and methods of operation before it can be deemed appropriate in the district and compatible with its surroundings. This was copied from Section 18.2.4.R.1, the applicability section of the review procedures for Special Use Permits. This is a redevelopment of existing facilities so many of the aspects that would typically be unknown have been in front of us for decades. Special Use Permits are unlike variances in that they only require a simple majority, where variances require 4/5<sup>th</sup> votes. The required findings for Special Use Permits are somewhat similar to those for variances. These five prongs will be what the board will use to decide the SUP. According to UDO Section 18.2.4.R.3, a special use permit shall be approved if the applicant demonstrates the proposed special use:

- a. Will not materially endanger the public health or safety if located where proposed
- b. Complies with all required standards, conditions, and specifications of this Ordinance, including Article 1-4: Use Standards, or is considered to be the use type, "Government facility, major"
- c. Will not substantially injure the value of the abutting land, or the special use is a public necessity
- d. Will be in harmony with the area in which it is to be located
- e. Is in general conformity with the Town's adopted policy guidance

Redevelopment, either through renovation of 50% or more of the value, or complete redevelopment is required to comply with current ordinances. The redevelopment of this site is classified as the "government facility comma major" use type as show in the excerpt from the UDO. The Government Use Category includes types that provide for the general operations and functions of local, state, or federal governments as well as use types that provide public safety services to the general public.

The new proposed Public Safety Complex is the government facility comma major use type and the site is within the CIR zoning district, so table 18.4.1.G Principal Use Table shows that this is a Special Use, which brings us here tonight for consideration of the special use permit. Michelle presented some of the architect's renderings of the new proposed building. This is going to be a phased project due to the fact that the Fire Department cannot relocate their operations to a temporary facility like the remainder of the uses on the site can. Michelle presented the timeline for the Special Use Permit Review Procedure. The pre-application conference was on September 18, 2020. There was not a neighborhood meeting conducted, but the project has been discussed at several prior Council meetings. The application was submitted on September 21, 2020. The staff review was completed. The Public Notification was completed on September 28, 2020, which was 21 days prior to public hearing. Letters were sent to abutting properties as well as a sign posted on site. The final step is tonight for the Board of Adjustment Review and decision on October 19, 2020. Michelle discussed the compliance matrix that was included in the agenda packet.

### **Staff Recommendation**

The following staff recommendations are provided in accordance with the requirements in Section 18.2.4. R.2.d.ii.

a. *Will not materially endanger the public health or safety if located where proposed;*

The same current facilities are located where proposed. The redevelopment of current facilities will increase the ability of the public safety departments (Fire and Police) to serve the community, so this proposed special use will enhance public health and safety.

b. *Complies with all required standards, conditions, and specifications of this Ordinance, including Article 18-4: Use Standards, or is considered to be the use type, "Government facility, major";*

This special use is considered to be the use type, "Government facility, major". There are several sections of district-specific and development standards that are not met by this proposed special use, but they are mostly no more nonconforming than the current use.

c. *Will not substantially injure the value of the abutting land, or the special use is a public necessity;*

The special use is a public necessity (health, safety, and welfare), but also the redevelopment of the current use at the current site with new buildings may increase the value of abutting land.

d. *Will be in harmony with the area in which it is to be located;*

The continued use of the location for the Town's Public Safety and Administration facilities will continue to be in harmony with the area. Additionally, the Commercial Circle (CIR) zoning district is, "... established to preserve and protect the traditional core of the Town as the primary civic, business, and cultural destination for visitors and residents." This civic facility complies with this guidance.

e. *Is in general conformity with the Town's adopted policy guidance.*

This special use is the result of years of collaborative work by Town Council and Staff to create a comprehensive facility that better serves the community. Staff confirms that this is conforming with the Town's policies and initiatives.

Staff recommends the Board of Adjustment approve the Special Use Permit with the following conditions:

1. Install an opaque fence to shield from view and protect the mechanical components located east of the Fire Department
2. Install "corral" in which to keep the roll-out trash carts
3. Install bicycle rack

Michelle noted there had been questions submitted from Johnathan McDaniel on behalf of MGM Properties LLC. The responses were included in the agenda packet given to you tonight. MGM was satisfied with the responses provided by the Town and did not feel the need to attend in person tonight.

Chairman Briley asked Attorney Taylor if the concerns brought up by MGM could be considered by the Board since they were not in attendance. Attorney Taylor noted the Town can consider their concerns but it is considered hear say because MGM is not present to speak or be cross examined.

Palma asked how many parking spaces would be provided for staff in the new building. Michelle noted there are currently 44 spaces. The new proposal shows there would be 41 spaces at the new facility.

Dean asked if the new facility would cause any additional stormwater run-off than the current facility. Michelle noted that it should not and there was a state stormwater permit issued for the new proposed Public Safety Building.

Chairman Briley questioned the amount of storage in the new proposed building. Mayor Cooper stated there is storage proposed in the Fire Department bays as well as an additional storage building on site for jet skis and other equipment. He noted there is more storage in the new proposed building than in the current space.

Attorney Taylor asked Michelle for the record, the areas that she noted in the application that did not meet the UDO, why is it not required to meet the UDO? Michelle stated there was a section of the Special Use Permit, item b that allows it not to comply with the requirements if it is a government facility major. Chairman Briley noted people have previously presented before the board and were turned down when they didn't meet all the requirements. He asked if the board was allowed to approve given the discrepancies. Mayor Cooper noted he wanted to walk through the Town's case.

Michelle asked for her presentation, reports and agenda packet be accepted into evidence. With no objections, all were entered into evidence.

### **Applicant's Presentation**

Mayor Cooper went through each of the requirements and stated why the Public Safety Complex would meet the conditions. He stated he was sure the plan that was submitted meets the five elements required to issue the special use permit.

a. *Will the special use not materially endanger the public health or safety if located where proposed?*

As Michelle noted, this is a Public Safety Building, the whole purpose is increasing the safety of our citizens. We have an old Fire Department Building now with leaks and structural issues. A new building would do nothing but increase the ability of our staff to take care of our citizens. He noted there would be drive through bays so that fire trucks would not be required to back into the street.

Chase Cullipher, 505 Kysers Cove Lane, Beaufort, NC. He is the Vice President at The Cullipher Group, license # 37378. He has been a licensed engineer for 11 years. Graduated from NC State University in 2006. Specializes in civil engineering. Stated he has lots of experience in similar site plans. Mayor Cooper requested Chase Cullipher be qualified as an expert witness in tonight's hearing. Palma made a motion to accept Cullipher as an expert witness, seconded by Dean. Vote was unanimous, 5-0. Motion carried.

Mayor Cooper asked Cullipher to provide an overview of the stormwater plan. Essentially, the site is grandfathered in for stormwater by the site. Currently the old building was built back in the 50's and the state now recognizes that stormwater laws were not in existence at that point and as such are allowed to redevelop the property within the existing amount of impervious coverage or less. The new Building as proposed will reduce the amount of impervious coverage on the lot. Cullipher stated they spent a lot of time planning the way the water would run off and believe there will be less stormwater run-off than in the current building.

Cullipher stated the current septic tanks will be removed. There will be a new lift station installed. Water and electrical cable will be provided underground.

b. *Does the special use comply with all required standards, conditions, and specifications of this Ordinance, including Article 18-4: Use Standards, or is considered to be the use type, "Government facility, major"?*

Mayor Cooper noted the new building would be used as the exact same use as current. What will change is the increased stability of the building as it will not be able to withstand higher winds which will increase our ability to take care of our citizens during hurricanes and other high wind events. For this standard, we either have to meet all the standards or be considered a Government Facility, major. We are considered the government facility major so the requirements for this condition are therefor met.

c. *Will the special use not substantially injure the value of the abutting land, or the special use is a public necessity?*

New Building is the exact same use, with a brand-new building. That can do nothing but increase the value of the land around it. However, the second part of this requirement is true. This new Public Safety Complex is a public necessity.

d. *Will be in harmony with the area in which it is to be located;*

We are going back on the same site, the new one will also be in harmony. The architects have worked hard to ensure the design of the new building fits in harmoniously with the surrounding neighborhood.

e. *Is the special use in general conformity with the Town's adopted policy guidance?*

Mayor Cooper touched on two different point regarding this requirement. The first is the section in the UDO that Michelle mentioned the purpose of this zoning district is to be a civic center of Town. This is a Public Safety Building, but will also be Town Hall. That makes in in line with the purpose within the UDO. The second is the taxpayers actually decided on the location of the new complex. There were surveys sent out to all taxpayers within Atlantic Beach and the majority of them stated they wanted to keep Town Hall in its current location.

Chairman Briley closed the public hearing, time was 7:15pm.

Attorney Taylor noted it should be added to the record that there was no one present in opposition of the Special Use Permit Application and that no person requested to participate or make comments remotely.

### **Board Discussion and Decision**

Chairman Briley stated each of the requirements or questions must be met or answered based on the evidence and testimony heard tonight.

1. Will the special use materially endanger the public health or safety if located where proposed?

No-Vote 5-0.

Dean-No, because it would enhance the ability to take care of the citizens. Fire trucks do not have to back up in the street.

Smith-No, improvements in facilities would allow the staff to better take care of the citizens.

Palma-No, this will improve the handicap access to the building as well

Briley-No, it will not materially endanger public safety

2. Does the special use comply with all required standards, conditions, and specifications of the UDO, including Article 18:4: Use Standards, or is considered to be the use type, "Government facility, major"?

Yes-Vote 5-0.

Dean-Yes, government building so it qualifies as government facility, major

Smith-Yes, government building so it qualifies as government facility, major

Palma-Yes, meets the marks for all ordinances

Bosse-Yes, because the building is a government facility it qualifies as a government facility major just as others have stated

Briley-Yes, agrees with other board members reasons.

3. Will the special use substantially injure the value of abutting land, or is it a public necessity?

No-Vote 5-0.

Dean-No, will not degrade the value of abutting land

Smith-No, will not injure the value of abutting land

Palma-No, agrees with others reasons

Bosse-No, it will improve land values and is also a public necessity

Briley-No, for reasons already stated by other board members

4. Will the special use be in harmony with the area in which it is to be located?

Yes-Vote 4-0. Palma voted no

Dean-Yes, same harmony as today

Smith-Yes, same harmony as today

Palma-No, this new building looks nothing like anything in the current neighborhood

Bosse-Yes, same harmony as the current building

Briley-Yes, because of reasons already stated

5. Is the special use in general conformity with the Town's adopted policy guidance?

Yes-Vote 5-0.

Dean-Yes, believes with the case presented tonight they have proven general conformity

Smith-Yes, same reason as Dean

Palma-Yes, based on the surveys, the town is doing what the taxpayers requested.

Bosse-Yes, same reason as Dean

Briley-Yes, because of reasons already stated by other Board members.

Chairman Briley has noted in the case tonight, the Board has found that all of the requirements have been met.

Palma made a motion *to approve* Special Use Permit 20-1 Public Safety/Admin Complex. Seconded by Smith. Vote was unanimous 5-0. Motion Carried.

There being no further business, the meeting adjourned at 7:12p.m.

Approved by:

  
Eddie Briley, Chair

  
Katrina Tyer, Clerk