



**Minutes
Town of Atlantic Beach
Planning Board Meeting
April 5, 2016**

Members Present

Norman Livengood
Rich Johnson
Steve Joyner
Ray Langley, Chairman
Llewellyn Ramsey
Curt Winbourne

Staff Present

Michelle Shreve, Planner
Kim Tynes, Secretary
David Walker, Town Manager

Members Absent

Neil Chamblee, Excused

Others Present

Derek Taylor, Town Attorney
Jim Bailey, Developer
Jim Brady, Developer
Ron Cullipher, Engineer
Zack Taylor
John King, Attorney
Robert Jenkins, Needle Rush Owner
Jimmy Beckham, IB&RC HOA President
Mike Shutak

CALL TO ORDER

The meeting was called to order by Chairman Ray Langley and Llewellyn Ramsey made a motion to excuse Neil Chamblee. A second was made by Curt Winbourne, with a unanimous vote to excuse him.

APPROVAL OF MINUTES

Chairman Langley called for a motion to change the October 13, 2015 Minutes listed on the Agenda to approve the minutes from the November 4, 2015 meeting. Norman Livengood made that motion and Rich Johnson seconded it with a unanimous vote for the change.

Rich Johnson made a motion to approve the November 4, 2015 Minutes with a second by Curt Winbourne. The vote was unanimous to approve the minutes.

NEW BUSINESS

Seaside Villas -

Michelle Shreve shared the following information with the Board. The UDO does not discuss resubmission of approved plans for development, so resubmission of these plans on March 4th began an entirely new major site plan review process as outlined in Article 14.

In compliance with the public outreach schedule for this process, staff posted the plans on the website and made them available at Town Hall, both on March 8th. On March 11th, staff posted a sign on the property at 2800 West Fort Macon Road and sent letters to the 94 property owners within five hundred feet of the property to familiarize the surrounding property owners with the plan and procedure. On March 15th, these same 94 property owners were sent a letter notifying them of this Planning Board meeting.

The majority of this parcel is zoned Resort Services. Multi-family development, specifically townhomes, is permitted with special regulations in this zoning district, because the area has an extremely high potential for both permanent and tourist types of residential development. The 3600 square foot northern section of this property is zoned R-1(7), so this section is to be used in conformity with ordinances for that zoning district.

This renaissance of Seaside Villas has 56 townhome units. There are 18 units with up to four bedrooms each and 38 units with up to three bedrooms each, for a maximum of 186 bedrooms. For this 4.57 acre tract of land, the density is 12.24 units per acre. This project is in compliance with the Land Use Plan, in that this area is moderately and highly suited for development for mixed-use residential. In addition to the 12 residential buildings, there is also a pool, clubhouse, and playground for the development.

The direction provided by the Land Use Plan states that the area is suitable for mixed-residential with a density of over 10 units per acre, which is carried out by regulations in the Resort Services zoning district.

The building separation requirements are met and clearly displayed on plans. Open recreational area requirements have been met and exceeded. The heights of the buildings are 37 feet and 45 feet, which is below the 55 foot height limit for the district. No additional regulations need to be met regarding the flood zone in which the property is located. The two points of ingress and egress to the development is located on Pelican Drive and on Fairview Drive. Landscaping and lighting plans have been submitted and found compliant with Articles 9 & 10. Parking requirements have been met and exceeded.

This project is being developed with a State storm water permit, which overrides the Town's storm water requirements for development on properties over an acre in size. NC DENR permits this development to cover less than 63.4% of the property, which is the coverage of the previous development, Jungle Land theme park. Applicants have met and exceeded the permitted allowance, covering 56.5% of the property.

Setbacks have been met or exceeded in each requirement. Applicants have submitted a myriad of documents to meet the major site plan requirements.

The Technical Review Committee unanimously recommended the project to the Planning Board and made some suggestions to the applicants. These suggestions included showing the fence around the pool (which is incidental to construction of an in-ground pool), showing a cross-section of the curb style, and showing the zoning as well as land use of the nearby parcels in Pine Knoll Shores. Additions were highlighted on the site plans.

Derek Taylor, Town Attorney instructed the Board to review these plans as if this is the first time they have seen these plans. Consider them as new plans and ask questions even if you have asked them before.

Ray Langley confirmed with the Planner and Attorney, to the best of their knowledge, these plans meet all government requirements.

Rich Johnson asked if there were any public comments or concerns. Then answer was no.

Steve Joyner inquired about the setback on Pelican. Per Michelle 20.04 is the setback and Steve commented that was good.

Llew Ramsey repeated question of meeting all requirements of staff and Counsel being met to which Derek Taylor replied he has not reviewed the plans but reminded them of past issues and asked Michelle to confirm concerns regarding 15.3.E (1) have been met. They have been.

Ron Cullipher, Stroud Engineering spoke on behalf of 2800 West Fort Macon's new application is very similar and stated the main difference is the cover sheet which did not exist before.

- The new sheet shows flood zones surrounding this property.
- Updates to zoning designations to surrounding properties and Pine Knoll Shores on the ocean side of this property.
- Curbing is required outside the landscaping islands, details updated.
- Developed a timetable schedule has been added on sheet 14.
 - First 30 days after approval, plan to begin grading, pads, sewer, storm water and electrical
 - 30-180 days --begin one unit and one duplex, pool and clubhouse plus infrastructure
 - Buildout may take 3 years but aiming for 2.5 years.
- Set-backs and building separation reflect no changes but notes were added for extra clarity.

Steve Joyner asked if they anticipate major construction on weekends. Michelle stated per Inspections Department, normal construction hours are Monday thru Saturday 7am and 7pm regarding due to noise.

Steve also asked if there had been any further discussion with neighbors to which Ron replied no.

Rich Johnson asked if there were any changes to unit size, number of bedrooms. Ron stated maximum number of 4 were shown but may be 3 bedrooms.

Per Llew Ramsey, Michelle confirmed all surrounding neighbors were notified by letter.

Ron confirmed no exterior changes have been made as Rich Johnson inquired. Nothing other than curbing as mentioned earlier.

Ray Langley pointed out to the board; all Town authority approved these plans as presented in the TRC (Technical Review Committee) meeting.

Doug Brady, Developer, 805 Front Street, Beaufort – Excited about the project and the plans reflect well below threshold regarding density and impervious surface. We have taken into consideration the concerns of the neighbors. We have reduced density, entrances and added open spaces and believe it to be a better project.

There were no further questions from the Board. Rich made a motion to approve the project for Council review and was second from Norm Livengood and vote was unanimous.

Map Amendment-

The property at 608 West Fort Macon Road was mistakenly left off of the zoning map, such that it is blank and not color coded for a zone at all. The parcel in question is the center of the three lots with pilings on them; to the west of Palm Suites. The town-wide rezoning in 2009 reflects that this property and the two neighboring properties are zoned R-1(C), Conservation District, which requires a Conditional Use Permit be issued in order to develop a single-family residential structure on the property.

Michelle presented the 608 West Fort Macon Road map correction initiative to Town Council during the March 28th meeting. Council called for a public hearing during the work session on April 21st in order to make a determination, and will continue the public hearing at the regularly scheduled meeting on April 25th. The Planning Board is reviewing the map tonight and will make a recommendation to the Town Council, which will be considered in addition to comments at the public hearing when Council decides on the issue.

Derek Taylor asked Board if this is considered a Scrivener's error, Michelle and Ray confirmed. Derek asked if there was an Action to rezone this lot by Council and Michelle confirmed it was, the parcel was just never colored in.

There were no further questions so the floor was open to comments.

John King, Attorney with Stubbs and Perdue in New Bern. He sent letter stating it is more than just this issue. (The letter in reference was not sent to the Planning Board, but to the Town Manager, Mayor and Planner.) He wants to address some comments such as labeled as Scrivener's error by staff. John doesn't know what action was taken by staff to determine whether legal descriptions in zoning ordinance encompass all of this area when zoned or just someone stated it was left out and given to Board to take on faith as scrivener's error and not a zoning error. He wants the Board to look deeper to make that determination.

An email from the Mayor was attached to his letter stating not to worry Mr. Taylor's property is not included in this zoning which is consistent with that one area being left out of the zone.

Mr. King is asking that the Board look into this matter before a decision was made and not treat as an error. He asked if proper notice was given, legal description were adequate to cover all property in question. Independent research is requested and asks that you not recommend at this time.

Ray asked if recommendation to move forward in affirmative way, what effects are there on your property. Mr. King stated the property is zoned the most restrictive residential zone and requires a Conditional Use Permit to obtain Building Permits in order to move forward which is more steps. If not rezoned and maintains current status, a simple request for building permits would be allowed.

Llew asked if he had a Building Permit to begin with and Mr. King explained they did and there is an issue to be addressed with the Building Department as covered in his letter. The building process was drug out and there are some issues with the Town and perhaps complaints from citizens regarding the pilings.

Per Mr. King, inspections were made and usually when inspections are made that extends the permit for an additional year however the last inspection had pilings installed to connect sewer pipe and inspection was done to sewer pipe but as I understand it, the Inspections Department said that was under sewer permit and your sewer permit got extended but your Building Permit did not. Although historically there had been inspections even with the sewer pipes. I believe there has been a change in the way the Town has addressed the inspections. Mr. Taylor received a letter today or yesterday stating the Building Permits had expired even though the other sub permits were extended. We have to address that issue with the Building Inspections Department. It is our contention the Building inspections itself encompassed all the sub permits. The reason we say that is if you look at what is required when you submit plans for building, you don't submit plans that don't show any plumbing and electrical. Plans show everything. If you look at the checklist the Town has, it says plumbing, foundation, pilings, electrical, insulation, and a complete list. Just because you have a sub permit under the building permit does not separate the project.

Our contention an inspection that has been done for the project would extend all permits and not just the sub permit required under that. That is kind of what happened with the building permit, the inspection was done in June of last year and two weeks after that or actually the original permit would have normally expired July 1st of last year and two weeks later my client was informed, oh by the way, that extended your sewer but not your building permit. That is kind of why we are in this quandary we are in now. This may be more than you wanted to hear.

Llew asked Derek Taylor if he had any recommendation before they decide.

Derek Taylor stated no, they are not the issue before the Planning Board. They may be important issues for the Inspections Department, Department of Insurance, Board of Adjustment or Court but tonight the only thing we are discussing is one lot in this area which does not appear to have been colored in on the map even though documents approved by Council during the rezoning of the lots on either side of this lot, was it a scrivener's error and they meant to get all three lots and have all three lots in Zone R1C and erroneously omitted on the map. That is the issue before this Planning Board and the other items will address on a different path and do not come before this Board.

Llew asked in all fairness, when they applied for the original permit, what was the Zoning then? Michelle stated Resort Residential which no longer exists. What would happen if you had changed the zoning on them mid-stream, could they have continued on if they were already building? Derek reiterated it is not for this Board to get into the nuances in this building permit, this will end up before the Board of Adjustment. This Board is only deciding why this one lot is white versus colored in like the ones on each side.

The Planner has stated this was an error and the Council intended for the zone to change for all three lots based on past Minutes. Mr. King is saying he has not seen the supporting documentation. You must decide if this was an error or not. You may request further information.

Curt Winbourne confirmed with Michelle the lot should have been colored in from the research you have done looking back to the intent.

Michelle stated staff has email chains and Town Council Minutes stating the lots are R1C and currently the lot has no zone at all on the zoning maps and she wants to color it in to reflect the zone it is in.

Steve Joyner asked if the Minutes state it was to be rezoned to which Michelle confirmed. She did not have a copy with her to support such.

John King asked if legal descriptions were used in the rezoning in legal notices or publications. Michelle stated that would require more research but she does email chains from the former Planner and Mr. Taylor discussing all of this. Mr. King stated he has an email from the highest elected official stating it would not be.

Derek Taylor stated the issue before the Board is if you are satisfied it was a scrivener's error, it goes on as such, if not, then you need to research further before sending to Council.

Curt Winbourne asked Mr. King if they determine this scrivener's error, will do your client some harm? Mr. King replied that it will make things more difficult as to that one lot. Mr. King has no evidence and asked the Board not to take it on faith.

Derek Taylor told the Board to rely what action Council took regarding the rezoning. Normally when rezoning is done there is description to identify to the public what is currently zoned and what will be affected by the change and what the new zone will be. That map was created when the UDO changed all the districts around. It was decided to hold on to some of these areas as conservation areas which is what R1C is supposed to be. You will be allowed to build there if you meet the restrictive concerns.

Norm Livengood commented he saw Needle Rush subdivision was recently sold and asked what that rest of the area was zoned to which Michelle answered R17. Norm then asked how they planned to build houses in the swamp.

Robert Jenkins is the beneficiary of the trust that now owns Needle Rush stated that plan to stay out of the 404 wetlands completely. He has a site plan drawn out after meeting with the Army Corp of Engineers and CAMA and intends to eliminate any intrusion into the 404 Wetlands utilizing the setbacks in the Town. They plan to recombine a couple of the lots since number 7 is really low. They are installing a seawall and back fill it in and plan to have little impact in the area.

Derek Taylor pointed out the 404 Wetlands is a Federal Issue and is not what is before the Board tonight.

Steve Joyner has not seen the letter Mr. King is referring to and Michelle told the Board the letter was came in over night before the meeting.

Llew Ramsey asked why Needle Rush is zoned R17 and not those three lots. None of the members could recall. Michelle stated these three lots include a hefty portion of the marshlands. Llew went on to state Joe Tarascio was the Chairman during that time and none of them liked the idea of disturbing the marsh but the developer had met all requirements of CAMA and Corp of Engineers.

Motion made by Llew to leave this open until further research is done and second by Steve Joyner with a unanimous vote for the June 7th meeting.

Derek Taylor shared his memory of the Town wanting to preserve the wetlands which is why that area was rezoned allowing a new zone be created making it more difficult to build in order to protect the marsh areas. Feds can say what they will but this Town wants to preserve the wetlands and that is what they did by raising the bar. The record needs to show this.

Curt Winbourne asked what the difference is between those three lots versus the remaining development. Michelle pointed out on the map the depths of those three lots had much more wetlands.

UDO Reorganization –


The Town has contracted with CodeWright Planners to create the Code Diagnosis, which is a document assessing the past, present, and future of the UDO. This will give a “big picture” of the ordinances and what it needs as far as reorganization and legislation update. We anticipate receipt of this document for staff review and editing in about two months. Michelle is scheduled for a conference call with CodeWright every two weeks for updates and questions. Currently do not have a date to deliver the updates other than an outline of how it should appear.

Robert Jenkins asked if the UDO changes will adjust setbacks. Michelle confirmed policies are in place, just need reorganization and legislative updates. He asked the board for feedback regarding their plans for Needle Rush. The Board stated that question is unfair at this time with no information to review. Mr. Jenkins stated the goal is to look similar to E. Bogue Blvd. and each home will be custom with individual charm.

ADJOURNMENT

Being no further business, Chairman Ray Langley called for a motion to adjourn the meeting. The motion was made by Llewellyn Ramsey and Steve Joyner. The vote was unanimous.

Respectfully Submitted,



Kim Tynes, Secretary

Approved by:



Ray Langley, Chairman