Town of Oak Island
Brunswick County, NC

The Town of Oak Island will preserve, protect, and enhance the quality of the natural and cultural environment of the community. In order to achieve this goal, the Town will improve the quality of its waterways, natural environment, beaches, dunes, water access and residential areas. The Town will maintain a unique scale and character that fosters a sense of community to make the Town a desirable place to live, work and call home, and a family vacation destination. The Town will also develop efficient sidewalks, bikeways, and roadway systems to protect its attractiveness in the future. The Town will also expand its recreational opportunities for residents of all ages and abilities. The Town will balance social and commercial needs and objectives for economic vitality.

Planning Board
Meeting Agenda
August 17, 2017 ● 10:30 AM
Town Hall ● Council Chambers

I. START-UP

1. **Call to Order:**
2. **Additions or corrections to the agenda**
3. **Approval of the Minutes**: (6/15/2017, 6/22/2017, 7/20/2017)
4. **Public Comment:** Please state your name and address for the record.

II. OLD BUSINESS

1. **Unified Development Ordinance**

III. NEW BUSINESS

1. **Seating of New Members**
2. **Selection of Board Chairman**
3. **Selection of Board Vice-Chairman**
4. **Rezoning**
5. **Cape Fear Regional Bike Plan**

IV. REPORTS/UPDATES

1. **Board Member Reports**
2. **Staff Reports –**
3. **Updates from Council Meeting –** Commercial Monopole CUP & Text Amendment

V. OTHER

Future Meetings: September 21, 2017 (Planning Board)
Adjournment

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MINUTES
PLANNING BOARD
June 15, 2017—10:30 A.M.
TOWN HALL -- COUNCIL CHAMBERS

Present: Chairman Ted Manos, Vice-chairman Denise Pacula, Board Members Helen Cashwell, Robert Carpenter, Bob Germaine, Cathy Bowes and Clay Jenkins, Town Planner Jake Vares and Human Resources Officer Debbie Lasek

Chairman Manos gave the invocation and led the Pledge of Allegiance.

Agenda: Ms. Cashwell added a discussion of food trucks and signs. Mr. Germaine added a discussion of an amendment to address the fill problem on the island. Mr. Carpenter added a discussion of a parking issue. There were no minutes to approve.

Chairman Manos advised the public that comments could be heard during the meeting.

There was no Old Business.

New Business:

1. Rezoning Application Request. Mr. Vares confirmed that there were no conflicts of interest for any of the Board members and gave a brief summary. The property is currently zone R6-MH and the applicant wishes to change the zoning to CB (East Oak Island Drive between NE 65th and NE 66th Street). There is R-6A, R6-MH and CB zones adjacent to the properties. There is an attached map in the agenda packet. He said in his opinion this would not be zoning, and that the Board should consider that all allowable uses in the CB district would be applicable to this property. Chairman Manos said that Jones Seafood is located directly to the west of these two parcels, and that to the east are parcels designated R6-MH. Mr. Carpenter said that this has come before the Board on two different occasions and was turned down; Mr. Vares said he did not find when that happened. Mr. Carpenter said that the property owners from Jones Seafood and Captains Cove Hotel told him of those rezoning requests.

Chairman Manos addressed Ms. Gulledge, who stated she was there only to answer questions. Answering a question from Ms. Bowes, Ms. Gulledge said there was no specific business intended for this and she thought it would be a good area for a commercial business. Mr. Carpenter mentioned encroachment in residential areas, and asked if there was consideration on the purchase to use it as commercial property; she did not look at other property in the commercial district and she was purchasing it as an investment. She said it was a unique opportunity to add commercial businesses, and that in the past there was a move to make most of Oak Island Drive commercial, which was opposed. Mr. Carpenter said Jones Seafood has been around for 64 years, Captains Cove for 40, and the Land Use plan says not to encroach on residential areas. Ms. Gulledge said she does not feel this is what they are doing. Mr. Vares added that buffers would be required; Mr. Carpenter said his question was not about buffers. Ms. Gulledge said she is asking for rezoning, thinks it would be a complement, and she does not feel it would be an encroachment. Whatever is put there would be nice and would be developed within guidelines and restrictions. Mr. Vares said there was only one response from an adjacent property owner who asked if there were any applicable restrictive covenants. Ms. Cashwell asked how many commercial properties were vacant and open; Mr. Vares said it would take a full GIS analysis to provide that information. Ms. Cashwell said that the Board needs to think about what we already have and how to improve it. Ms. Pacula noted that Ms. Gulledge is improving 58th street corner; there was further discussion regarding vacant commercial property and empty lots in the commercial district.

Chairman Manos asked the Board members what they perceive the property would be useful for; he asked if anyone would build a home there. There was further discussion regarding the commercial property and housing located next to commercial properties.

David Purser, 5001 O'Quinn Blvd: Mr. Purser said he thinks that what helps define the situation is that when people are on Oak Island Drive, they have a "feel" of a commercial area. Ms. Gulledge is renovating one parcel and adding a commercial property. Mr. Carpenter said that according to the survey done for the Comprehensive Land Use Plan (LUP), people said this is what they do not want. He also noted that Ms. Gulledge purchased the land as residential and is looking to increase the value of the property and said the Board should not be party to that. Mr. Vares disagreed, saying that is the very reason that most people request rezoning. There was further discussion regarding spot zoning and residential and commercial zoning. Ms. Pacula said that the LUP survey wishes were to clean up existing commercial, and that with the economy you can slowly see some of these old dilapidated buildings being removed or rehabbed. Mr. Carpenter again said that the Land Use Plan noted no encroaching on residential areas, and a previous note that the business district was supposed to "dead end" at that location. Mr. Purser added that with the parking issues on the island, some residential areas will have to be "given up" for parking and that Jones Seafood could appreciate being able to park there.

Kelly Germaine, 6610 Kings Lynn: Ms. Germaine said that the cleaning up of the district was the intent of the wording in the LUP. There was further discussion regarding interpreting the language of the Land Use Plan.

Betty Hupp, 7916 E. Yacht Drive: Ms. Hupp said she has lived here since 1995, and has owned property since 1957. She said she has seen encroachment into the residential sections, wetlands destroyed for building, and that those who live here have very little opportunity to speak their minds because they feel they won't be listened to. The land will go if they do not protect it. Putting big houses on little lots will not help; putting something in the residential section will result in more. She asked the Planning Board to not allow encroachment into the residential area. Ms. Gulledge said that a business or a home will go on that land; she disagrees with making parking lots. The two eastward lots were cleared with a large cluster of oak trees remaining. She said she appreciated the Board's consideration.

Ms. Pacula again referred to the LUP; Mr. Carpenter again noted that Jones Seafood has been the dead end of the commercial district for 64 years. Chairman Manos said that this does not mean that today they must adhere to those same guidelines just because that's what it was 60 years ago.

Mr. Germaine noted the building on the corner of 40th St., the old campground, land of the Long Beach Pier. He said that people go with what will give them the most value. He noted that he did not think this was too much encroachment. He said that the right new commercial business would do the Town some good. Ms. Hupp asked to speak; Chairman Manos asked her to wait until the Board members have spoken. Mr. Jenkins said that something about this is bothering him; if they were allowed to build right next to the edge, they would be right next to the adjacent residential properties as there is no alley. However, no property owners are here to complain, and said that commercial would be better than vacant property. Ms. Pacula said that Jones Seafood does not have an alley, either. Chairman Manos noted that a substantial buffer would be needed to separate the property from the adjacent property owner. Mr. Jenkins explained that 95% of the commercial properties have the buffer of an alley way.

Ms. Carpenter made a motion to approve the rezoning; Mr. Vares asked to add approval of the associated Findings of Fact and Mr. Carpenter amended his motion to include that. Ms. Pacula seconded the motion.

Ms. Hupp said, if this property were rezoned commercial, eventually all of Oak Island Drive would be forced to deal with commercial. Many people bought their properties there to live here comfortably. She

said that the builders and real estate people don't understand what it's like to live here and see our properties go. Chairman Manos noted that all Board members live on the island. Ms. Pacula mentioned that this is the area where tiny houses could be placed; they were almost devaluing this area already.

The motion passed 4-3 with Chairman Manos and members Pacula, Germaine and Jenkins in favor and members Bowes, Carpenter and Cashwell opposed.

Food Trucks: Ms. Cashwell said that there is a huge motor home advertising burgers and the building there is used as an ice cream shop, with picnic tables in the parking lot. She asked how all this took place. Chairman Manos said this came before the Board last meeting; Mr. Vares said they applied for permits, and after verification for compliance, Town staff issued the permits. Kelley Germaine noted that this was brought up by David Purser when discussing his permit. Ms. Cashwell asked what this shop was; Mr. Vares said it is food/retail sales. He said there were two separate permits, and Mr. Vares said that the food truck is housed in the extra spaces that were designed specifically for that purpose. Ms. Cashwell said that the truck and the tables take up almost all the parking; Mr. Carpenter said they created new parking on the side and on the adjacent property and Mr. Vares agreed and said that it is compliant. The Town issues 12 permits for itinerant merchants from March to November for this type of purpose.

Ms. Cashwell said that the old Red and White shopping center had a truck with two feather signs in it and Mr. Vares agreed that people are really creative with more signs.

Fill Ordinance: Mr. Germaine said he wanted staff to come up with a better definition of fill in order to help Development Services to determine how much fill can go in a lot. The Germaines noted that coming from the west end to 58th Street, they notice more than most as they drive it daily. Coming from Kings Lynn, on weekends, multiple trucks come down on weekends to fill in lots. Kelley Germaine show pictures to the Board members. This presents situations where lots with more fill end up causing more water to run onto neighboring lots. Mr. Germaine spoke about several homes in this area that he suspects have had extra fill. They have noticed during the years that these situations occur when they will not be noticed, and said that Development Services should go out and photograph to ensure that this does not happen. There was further discussion regarding fill and building heights. Ms. Cashwell said there was no point in creating more ordinances since staff has a "lackadaisical" attitude and does nothing to enforce the ones we have. Ms. Pacula asked Development Services Director Steve Edwards when a bulkhead could be built; Mr. Edwards said the fill on that property was according to ordinance and he was unsure what the Board was directing staff to complete. Mr. Vares noted that six months were spent on writing the fill ordinance, and he felt they had beaten a dead horse on this subject. Mr. Edwards referenced the ordinance language regarding fill, and said the wall was there to hold the sand in. Mr. Germaine asked again about the house at the end of Kings Lynn; Mr. Edwards said that was site specific. Chairman Manos said he was trying to understand what, if there is a problem, it is. Mr. Edwards said that people in that private neighborhood do not seem to have a problem, and that every property down there had brought in fill in order to level the property to the highest point of the lot. Mr. Edwards said that this may be where the Board would like staff to look at this; he explained the situation on the filling of the lots in the private neighborhood and said that the contractors said they did not bring in additional fill on the sites. There was a substantial dune in front of that property. After further discussion, Chairman Manos asked how many were left down there and Mr. Edwards said he thought there were two. He asked if they were to ask to go to a standard of average lot height, he wondered how it would affect the remaining two lots and Mr. Edwards said they would still be able to fill. Mr. Vares said that staff received 4-5 complaints from the Germaines in the last few months, investigated and found all issues to be compliant and that it seems to be more of the Germaines not liking the ordinance. Chairman Manos asked Mr. Edwards if there were other particular areas that are of concern, and Mr. Edwards said that this concern is island-wide. He also noted that the Board brought it a step closer as far as control, as there was no fill ordinance before the current one was adopted. When Chairman Manos asked if the Board needs to direct staff, Mr. Jenkins said

that this had been discussed in great detail. Ms. Cashwell asked about relating to the height of the road; Mr. Vares read the ordinance into the record. Mr. Germaine asked again about the properties at the end of Kings Lynn and said that the one lot was filled according to what was thought would be put on the next lot; Mr. Edwards said that was not the case. Mr. Edwards again said that was specific to a project and should be handled accordingly unless they want to direct staff to come back with proposed changes for the ordinance. Chairman Manos asked for a motion.

Ms. Germaine made a motion for staff to go back and try to control it a little better, starting with taking pictures…Mr. Carpenter said that this was not a motion but a request. Chairman Manos clarified a motion.

Mr. Germaine made a motion to direct staff to prepare language that says that the highest amount of fill would be the average of the lot or one foot above the ground. Ms. Cashwell seconded the motion. The motion failed 2-5 with members Cashwell and Germaine in favor and all other opposed.

Parking: Mr. Carpenter said that people had come to him regarding people cutting in to the right-of-way for parking and homeowners having trouble getting out of their own driveways; he asked staff to consider this when looking at parking. Ms. Bowes agreed and said that this is a difficult situation. Mr. Carpenter said that with more cars out there, it has become more dangerous. Mr. Germaine added that most people that come down Beach Drive do not slow down when encountering walkers or bike riders; he added that they have almost been killed several times due to drivers not moving over, and that if cars were in the right-of-way they would be dead. There was further discussion regarding the enforcement issue of parking.

Chairman Manos asked if there was any other discussion or comments.

Staff report: Mr. Vares said the next regular meeting is July 20th. The UDO review meeting is June 22nd. The Brunswick Country Trail Plan has had positive feedback from other municipalities with broad support. The Council meeting on Tuesday night resulted in adoption of all items that the Planning Board had recommended. Mr. Pacula noted that she thought the advertising was incorrect regarding a business and a dwelling. Mr. Vares noted they are vested in and have already applied for the development permit and are well ahead of the UDO. He added that the DWQ stormwater regulations are no longer an issue as the State pulled back those regulations. He also commented briefly about the Town not enforcing ordinances, saying there were 41 new cases filed in the last month, averaging 2 new cases every day.

Chairman Manos had two additional items to address. He said that issues that are approved by the Planning Board and then presented to Town Council should also note the particulars of what the Planning Board went through with the issue. He said that he thinks that it might help Town Council at this point in time if they stop and think about the fact that the Planning Board already reviewed it, instead of thinking that it is just the staff or an applicant bringing this up before the Council. Also, the next UDO meeting on the 22nd will cover the full draft of the UDO. However, he cautioned Board members that they have spent the last 8 months covering the UDO, and that they have covered all the language in the packet with the exception of additions which are highlighted. He asked the Board members to understand it is not a gargantuan task, due to the review and substantial discussion and passage of this language. He asked the Board members to look for the anomalies and said he believes it will only take one meeting to take care of it. Ms. Cashwell asked about re-addressing the Table of Uses and Chairman Manos agreed.

Mr. Vares noted that Chairman Manos, Ms. Cashwell and Mr. Carpenter have terms set to expire in August.

Mr. Edwards made two comments: He reached out to Heather Keefer regarding the flood plan ordinances and the conditioning of areas below flood. He said that she said this is intended for jurisdictions with split level entry, which is not allowed on Oak Island. This was not intended to allow people to condition storage areas under their homes. He also wanted to note that the stormwater issue has been pulled back for review and will come back; it is not a dead item. Chairman Manos asked about language in the UDO with language to that 1.5 inches retention; Mr. Edwards said it could stay in the UDO and could be modified in response to specific changes by the State. Ms. Pacula asked if they intended to have the UDO approved at the next meeting and Mr. Vares said that it could and then go on to the next Council meeting; Mr. Holland would handle the necessary advertising. After further discussion, Mr. Vares said that public comments could be made in the usual matter at the Council meeting. Ms. Cashwell expressed concern about the public finding out about things that they have done for years no longer being allowed and Mr. Vares said that each UDO meeting has been advertised. There was further discussion regarding public awareness.

Ms. Cashwell made a motion to adjourn at 11:55 a.m. Ms. Pacula seconded and the motion passed unanimously.

_____
Ted Manos, Chairman

Attested: _____
Lisa P. Stites, CMC
Assistant Manager/Town Clerk

MINUTES
PLANNINNG BOARD – UDO REVIEW
June 22, 2017—10:00 A.M.
TOWN HALL -- COUNCIL CHAMBERS

Present: Chairman Ted Manos, Vice-chairman Denise Pacula, Board Members Bob Germaine, Cathy Bowes, Helen Cashwell, Bob Carpenter and Clay Jenkins, Town Planner Jake Vares, Administrative Support Specialist and Human Resources Officer Debbie Lasek. Dale Holland and Cindy Anderson of Holland Consulting were also present.

Chairman Manos called the meeting to order at 10:02 a.m. He gave the Invocation and led Pledge of Allegiance.

There were no changes to the Agenda, and Chairman Manos said it stood approved.

Chairman Manos said Public Comments would be first.

Mark Kortright from the Preserve, 2100 Marsh Grove Lane: He said they would like the Board to review and reassess the zoning designation of their community. They are presently zoned C-LD; they are confused by this zoning. Historically, the development sought and received permits for a 10-dock boat slip. They initially saw no need for a 10-slip boat dock and reduced the capacity to an 8. He distributed pictures of the model used for this. Chairman Manos interrupted and said that that he thought they would be asking for a marina to be allowed in C-LD. Mr. Kortright said he would defer to the Board's opinion. Based on his research, he understood they would need a permit and perhaps submit all engineering drawings to CAMA. Ms. Pacula said that the property next door to the Preserve belongs to her family; she asked whether they have obtained vested rights. Mr. Kortright said they have gotten approval for a 10-slip dock and they just want to modify to a day dock. Mr. Vares noted that in Section 6-6 in the draft UDO, there are docks permissible in many zoning districts, but not the one they are located in. Ms. Pacula noted that there were supposed to be changes, and that CAMA would have final say on marinas. Mr. Vares said that following previous discussions, which were lengthy, they had decided not to have a marina in the C-LD but the Preserve residents are not asking for a marina, only a dock. These are not currently allowed. Mr. Jenkins said he thought they had discussed this for the Preserve for a 10-slip marina; Mr. Carpenter said this was before August 2015. There was discussion about the previous permits issued; Ms. Pacula said if he did not have his vested rights, the permit would now be invalid. Chairman Manos asked if, they simply approved a 10 slip or smaller, why cannot the Planning Board take care of it now? Mr. Vares said it needs to first be permissible in the zoning district. Ms. Pacula noted that they must go with what CAMA says; they have the final say and she says they should just let them go with dealing with CAMA.

Ms. Pacula made a motion to allow docks and piers under all categories, and Marinas and boataminiums under C-LD. The motion was seconded by Mr. Germaine and passed unanimously. Chairman Manos noted that they had changed the Table of Uses, that the definition of "marina" would be CAMA's definition and that docks and piers will be allowed in any zone. Mr. Vares verified that the changes in the table would be to "PS," permitted with supplemental regulations. Mr. Holland also said that the draft ordinance has been changed, but it must go through Public Hearing and be determined by Council. After further discussion, Mr. Cartwright said they are looking to make these changes ASAP, and they plan to make a presentation to all homeowners in the next 45 days. There are 134 condominiums, and there is talk of building 32 cottages. They have met with CAMA and are operating under their guidance; they also have verbal approval that a reduction from a 10-slip dock is just a formality.

Chairman Manos asked if there is another motion to approve what they are doing right now; Mr. Carpenter questioned the ability to do so. Mr. Vares agreed, and stated this would have to go before Council. Ms. Pacula noted that on another project she is working on, a 12-unit was listed as a Commercial Pier with CAMA and a commercial pier would be allowed in C-LD. Mr. Vares said he looked at private dock and pier. She explained that because it was a condominium that she is looking at, CAMA considers it to be a commercial pier. The Preserve has a Major permit, according to someone in the audience. After further discussion, Chairman Manos said the Preserve is "good to go" with the Planning Board and it appears they are "good to go" with everyone else. Mr. Vares said that the Town's current definitions do not mesh with CAMA's.

Mr. Holland then moved onto the UDO; Chairman Manos said they have all been forewarned that they have spent months putting this together, and everyone hoped that today they would address only anomalies. Mr. Holland said there are comments in every article; they can proceed article by article on the changes, which are indicated in green highlighting, and deletions are indicated by strike-throughs.

Article 1-no changes.

Article 2—2-5 2.10 Ms. Pacula asked about lots in the mobile home section that are 44 feet wide; if two were combined, they would no longer be able to be separated as they would be less than 50 feet. Mr. Jenkins disagreed, as he said they discussed the ability to take them back to their original size.

Ms. Pacula made a motion that all lots, regardless of road frontage, could be returned to their original platted size. Ms. Cashwell seconded and the motion passed unanimously. Chairman Manos clarified that this will remove the language that sets a minimum road frontage and sign.

Article 3—3-3 there was a question regarding the ETJ. Section 3.3 talks of the Planning Board. Mr. Holland said that the County appoints a Town Planning Board member if there is an ETJ; he cannot answer for what happened in the past. Additionally, Ms. Pacula noted under 3.5 that secretaries are not always a "her" in 3.3.3.3 and should be "his or her". 3.3.3.5.7—Mr. Carpenter questioned whether the Planning Board would still have quasi-judicial hearings and it was confirmed by Mr. Vares.

Article 4—no comments.

Article 5: Ms. Pacula noted that 5-9, in the flow chart, in order to keep consistency, the wording should be changed to "Town Council."

Article 6, Table of Uses: Ms. Pacula noted that docks/piers-private on 6.6 should be allowed in all of the districts; "PS" all the way across the board. Ms. Anderson said the supplemental regulations are for CAMA approval. Mr. Holland asked if they wanted PS in Industrial as well; Chairman Manos said to take it out except for the PCO. Ms. Pacula asked about Temporary Storage Units and where they would be allowed; Chairman Manos questioned allowing them in R-7 and R-6 and R6-MH. Mr. Holland noted that he would not allow them in multi-unit housing. Ms. Pacula asked about R-MU and C-MU residential and whether the only difference was 10%; Mr. Holland said the differentiation could be made greater, or it could be merge into a mixed-use district. Chairman Manos questioned if it could be merged into mixed use; Mr. Jenkins clarified that this was only for mixed use and Ms. Pacula confirmed that the only difference was the 10% residential. Mr. Holland said he would have no problem with combining them, as they are both special use districts. Upon questioning from Mr. Jenkins and Ms. Bowes, Mr. Holland said he would put restrictions on the mainland but not the island; he asked the Board to merge them and leave them in special use zoning so they can be judged on an individual basis. Chairman Manos suggested merging them to the higher restrictions; the Board concurred. Ms. Pacula asked about 6-12, marinas and

boatominiums. She said she remembers talking with Steve Edwards about this; Mr. Vares said a vote from the Board would be required to change that. Mr. Carpenter said he would feel more comfortable checking the minutes to see what had been discussed; Chairman Manos said he would be concerned about putting it on the back burner. There was further discussion; Ms. Pacula noted that only the C-LD zone has land on the waterway. The Board decided to come back to this later. Mr. Carpenter asked about dwellings over businesses (6-13), and questioned whether they would want to continue to have these situations come before the Board or to just have it permitted. He suggested keeping it before the Board; Mr. Jenkins asked if this would be reviewed if left at staff level. Mr. Holland noted that it would be PS with supplemental regulations; Mr. Vares said that staff verifies if supplemental regulations have been met. There was further discussion regarding the permitting of the situation. The Board agreed to keep this as a conditional use situation and keep all dwellings over a business permitted (SS). Chairman Manos then noted that if in a PUD, they would not require all mixed use come before them. There was further discussion regarding PUD and permitting. Mr. Holland explained suggested an "S" which is a special use, and that "SS" is special use with supplemental regulations; Chairman Manos and the Board agreed to change them to "S." Ms. Pacula asked whether they could have condominiums in a C-LD per the plan; Mr. Jenkins noted there is a great deal of C-LD on the mainland and he could see condos going in there in the future. Chairman Manos agreed, and said if they put it in there as a PUD it would be fine, but if not they would want to keep it before the Planning Board, and suggested keeping it an "S" in the C-LD.

Ms. Cashwell said she just does not understand how, if the Town Council said houses were 3,999 square feet, why Mr. Vares continues to use the "4000" square feet. Ms. Pacula said that it should say "4,000 and greater," rather than "over 4,000." Mr. Vares explained that Council adopted a text amendment to allow houses up to 3,999 square feet and that houses 4,000 to 5,000 square feet were allowed (on the island) with a Conditional Use Permit. Ms. Cashwell disagreed; Mr. Vares said again that Council did make this decision, and voted twice, adding in the conditions the second time. There was further discussion regarding the Council decision and the size of homes. Ms. Pacula said she remembered large homes being allowed in the CR; Mr. Vares agreed that the Board agreed to allow homes in the CR district. This is in 6-13, under the large single family, CRSS. Chairman Manos asked Mr. Vares for clarification of the square footage.

Article 7: Ms. Pacula asked for clarification on pg. 7, 7-7; under fences, 7.8.4, on the green highlighted area. Mr. Vares said this was based on a text amendment; this does not allow one to go into a right-of-way. She asked about exceptions to the right-of-way. Mr. Vares said this is addressed in Chapter 14, where it states fences and such cannot encroach into the right-of-way. The Board added the words "up to" in order to clarify the statement regarding fences in side yards.

Chairman Manos said there was a proposal to delete 7.31 regarding rentals; Mr. Vares said there are many reasons to keep this, as it could have a negative impact on tourism and loss of rental income/decreased home value for homeowners. Additionally, the cost of implementation can be high. The City of Asheville is dealing with a lawsuit over this, and had to hire additional staff members to maintain the program. After further discussion, Ms. Pacula asked what was considered a short term rental; Mr. Vares read the definition to the Board. Mr. Carpenter noted that he remembers Board concerns about houses becoming "mini motels," and Mr. Vares confirmed that they spent a great deal of time on the language. Mr. Holland confirmed that all of that discussion was in regards to regulation of large homes. Ms. Anderson said this language came from something that Mr. Vares sent that came from a Town Council action, and Mr. Holland confirmed. Ms. Anderson said she would check her notes when Mr. Vares said he does not remember sending anything like this to Holland. Ms. Pacula said she thought the requirement for registration was in order to confirm that the Airbnb and VRBO are paying Accommodations Tax. Chairman Manos mentioned several inconsistencies; Mr. Holland said that signage should be allowed as that in the signage section and made the observation that if the Town will not consistently enforce it, then

it should not be included. Chairman Manos asked if the Board wanted the whole 7.31 removed or included. Ms. Bowes suggested keeping it in with modifications. Ms. Bowes pointed out that they are being asked to register for acknowledgement, not for permission to operate; this is for accommodation taxes. Mr. Holland agreed that getting rid of the word "license" is appropriate and he proposed language requiring the homeowners to register for emergency services purposes. The Board discussed other items to remove from the Table of Uses in vacation rentals, such as the limit of two persons per bedroom 7.31.3. Mr. Holland noted that 31.5 should be removed, as the Town does not issue vacation home permits; Ms. Bowes asked about leaving "may" in there for future use. Chairman Manos said he agreed with Mr. Holland. Mr. Germaine asked about violations, and Chairman Manos said this is addressed in another section. Chairman Manos noted that 31.7, 8 and 9 do not need to be included, and told Mr. Germaine that they could not suspend an owner for actions made by people at the property. There was further discussion regarding this section and owner liability. Ms. Bowes again suggested that the gist of this section was to have property owners alert the Town that they have a short-term rental in order for the collection of accommodations taxes; Mr. Holland said he did not think that the UDO was an appropriate place to lobby for tax collection. Mr. Carpenter said he didn't want to include items that were not enforceable, and Mr. Vares said that they need to have regulations in order to protect the Town. Ms. Pacula asked about requiring them to register for safety, and Mr. Vares said he was not telling them they couldn't do that. Chairman Manos said that he would be in favor of deleting the whole thing and leave the paragraph about the registration for emergency services; he would also add language for accommodations taxes. Mr. Germaine agreed in adding the taxes. Mr. Holland asked if the Town had an ordinance regarding the accommodations taxes; Chairman Manos said there is absolutely nothing that requires the homeowners notify the Town. Mr. Holland stated the Town should handle the taxes in a different way; after further discussion, the Board agreed to strike the entire section and leave in the registering for emergency purposes. Ms. Pacula asked to go back to 7-17; this was where the language was regarding homes and square footage of 4000; it needs to be "4000 or greater." Ms. Anderson said she would make the changes.

The Board took a recess from 11:30 to 11:39 a.m.

Article 8: Mr. Vares addressed a concern from Chairman Manos about allowing elevators/lifts in side yard encroachments on page 8-16; this currently requires a variance from the Board of Adjustment. Ms. Anderson noted it was in 8.14.3. Ms. Pacula asked how many times there had been variance requests there had been this year. Mr. Vares gave details on the ones he recalled. **Chairman Manos made a motion that they may encroach up to 5 feet into the rear or side setback.** Mr. Carpenter said the side setback would be tough, and most Board members concurred. Chairman Manos said there are people out there needing access, and they may not be able to do it in a front or rear setback. Ms. Bowes commented this would be a minority group. Chairman Manos said the ordinance has provisions with zero setbacks from some houses and we are talking about an aging community. He said the majority of them will try to put it where it is appropriate. There was further discussion; Mr. Holland noted that all residential setbacks are 8-10 feet. Ms. Anderson said that she had spoken to Steve Edwards about this, and that he wanted to make the front and rear setbacks 5'5". Mr. Carpenter again mentioned that the side yard would be a problem. **The Board voted 5 to 2, and the motion did not pass.** The Board also agreed changing the setbacks to 5'5" in front and rear and nothing on the side per Steve Edward's suggestion.

Article 9: Mr. Holland suggested stopping at section 10. The Board decided to finish Article 9 before adjourning. Mr. Jenkins noted that on 9.9, he did not remember talking about the appraised tax value; Mr. Holland noted that he may not have been present at that meeting, and there was indeed a long discussion about this. It was added at the request of the Planning Board.

Chairman Manos then noted everything through Article 9 has been approved. The next meeting is on July 13th at 10:00 a.m.; the UDO meeting after that is July 27th. The regular Planning Board meeting for the UDO, and the Planning Board is July 20th.

Mr. Carpenter made a motion to adjourn at 11:55 a.m. Ms. Pacula seconded and the motion passed unanimously.

_____
Ted Manos, Chairman

Attested: _____
Lisa P. Stites, CMC
Assistant Manager/Town Clerk

MINUTES
PLANNING BOARD
JULY 20, 2017 – 10:30 A.M.
OAK ISLAND TOWN HALL – COUNCIL CHAMBERS

PRESENT: Chairman Ted Manos, Vice-chairman Denise Pacula, Helen Cashwell, Bob Carpenter, Bob Germaine, and Clay Jenkins, Planning and Zoning Coordinator Jake Vares, and Assistant Manager/Town Clerk Lisa P. Stites. Member Cathy Bowes was not present.

Chairman Manos called the meeting to order at 10:31 a.m. He gave the invocation and led the Pledge of Allegiance to the flag.

Chairman Manos asked for any adjustments to the agenda; there were none.

Public Comments:

Lynn Gulledge, 126 SW 5th Street: Ms. Gulledge thanked the Board members for their time and the work they do. Ms. Gulledge said she came in front of the Planning Board, paid the application fee, made her case and the Planning Board did recommend approval of the rezoning request, though she acknowledged it was not a unanimous decision. She asked that the Planning Board request that the Town Council have more of a format for recognizing the Planning Board's recommendations in front of the public. She acknowledged that it was in the Council agenda packet. She said that she did not have an opportunity to speak about her case at the Council meeting. She said there was great organization in opposition to her and that was very clear that it was orchestrated. Ms. Gulledge said that at no time did the Mayor or Council ask her if she had something to say. She said she should have an attorney with her. She said that if the Planning Board's recommendation was not listened to and the Planner even heard, then there was something wrong in the process. Ms. Gulledge said that she didn't think she was treated fairly and that she would be talking with the Mayor. She said that after the break, one Council member even thought that the motion died for a lack of second and that it wasn't even voted on. She said that she would continue to be involved and continue to make comments. She said that she would embrace growth of the Town positively, but that she wouldn't be mistreated or run over. She said that the Land Use Plan includes comments for controlled commercial development, though she said that document was a guide. She said her request was not for spot zoning. She said that at a minimum, this Board ought to be listened to by Council. She wished the Board members luck in their work.

Chairman Manos thanked Ms. Gulledge for her comments, particularly her comment that the work of the Planning Board should be taken seriously. He said that the decision was a Council decision and that the Planning Board only makes recommendations. He also said he would not criticize Council as it was their decision. He did say that he agreed that there is something wrong with the format of Council meetings. He said that the recommendation of a Board should be put forth to the Council because the Board spends a lot more time on these issues than the Council has time to do. Chairman Manos also said that for every item on the Council agenda, citizens should have the time to speak as the item is discussed.

Ms. Cashwell said that she thought there was a misunderstanding about how important the Land Use Plan is; she said it is the document that is to be used to run the Town. She said that the LUP is based on what the citizens wanted. Ms. Pacula said that the LUP is an important document but that it was a guide. She said that the LUP said that there should be more commercial property on the island as well as being on the mainland. Ms. Cashwell said that it also said that residential should not be compromised by commercial development. Mr. Germaine said that the Town has taken a lot of area out of commercial and this would

have been a good location for commercial property. Ms. Caswell said that it would have removed residential from a small residential zone. Chairman Manos said that he thought they all agreed it was an important document.

Kelley Germaine, 6610 Kings Lynn Drive: Ms. Germaine said that she was Chairman of the Comprehensive Land Use Plan Committee and that one thing the Board had not mentioned was in fill; the commercial area that already exists should be improved.

Old Business:

1. Model Flood Ordinance: Mr. Vares said that it was the areas highlighted in green that were new for discussion.

Page 2: Area of Future Conditions… : no changes

Page 3: Design Flood: Mr. Vares said this one is not optional, jut a revision that was incorporated.

Page 5: Floodway: Mr. Vares said this was not optional either. Chairman Manos questioned the definition. Mr. Vares said he did not understand it either, but it is the State's definition.

Page 5-6: Letter of Map… : This is also from the State's definition.

Page 7-8: (OPTIONAL For the purpose … : Consensus of the Board was to use the proposed language.

Page 8: CRS communities…. Regarding Numbers 1, 2 and 3, and the paragraph in bold before it, staff suggests that these not be included as this would be cumbersome to track these individual separately and we do not have the resources to do this. Consensus of the Board was to follow staff's recommendation.

Page 9: CRS Communities…staff recommends not including numbers 1 and 2 of the preceding paragraph in bold. Consensus was to leave this section out.

Page 14: Staff recommends including (b)(i). Consensus was to include it.

Page 14: Regarding (b)(ii), Mr. Vares said that this section was not optional.

Page 24: (5)(d) The sentence that reads "Substantial damage also means…before the damage occurred" and the following sentence in parenthesis will be removed.

Mr. Germaine made a motion to approve the changes discussed today. Mr. Carpenter seconded and the motion passed unanimously. Mr. Germaine made a motion to recommend approval of the Flood Damage Prevention Ordinance as amended. Mr. Carpenter seconded and the motion passed unanimously.

New Business:

1. Text Amendment; and
2. Conditional Use Permit request.

Mitch Holmgren, contractor for AT&T, said the existing monopole is structurally overloaded and has outlived its life. He said that the location of the pole also makes it not practical to replace in its existing spot with all of the utilities, etc. underground. AT&T is now asking for a text amendment and a Conditional Use Permit to locate the pole adjacent to a small building AT&T has across the street (by the church). Ms. Cashwell asked how much land would be used as the Town ordinance requires 10 acres. Board members corrected her, saying 1 acre was required. Answering a question from Chairman Manos,

Mr. Holmgren said that they would put the pole adjacent to a small building across the street. Ms. Pacula asked if the Town was not allowing the pole to be replaced in its current location; Mr. Holmgren said that was not the case. Mr. Holmgren said that BellSouth had erected the pole and deeded it to the Town. The pole currently has AT&T equipment and repeaters for the Police Department. He said they did an analysis and the size dishes they would like to put on it would put it past capacity. Answering a question from Ms. Pacula, Mr. Holmgren said that removing the dishes would reduce the load on the pole. He also said that the Town would be able to continue using the pole once it is relocated.

Mr. Carpenter said that even with eliminating subsection (d), it would eliminate the setback rules. He said that they also have to think of all property owners.

The Board and Mr. Holmgren discussed the logistics of moving the pole and the police repeaters and what kind of equipment AT&T has on the pole. Ms. Pacula asked if there were other property that could be purchased for a pole. Mr. Holmgren said that typically they would lease property for this, and that they had looked at existing commercial property. Ms. Cashwell asked if he could put a new pole on Town property; he said that it could, but that would involve digging up the foundation. Chairman Manos asked if there was an agreement for who was to maintain the pole; Mr. Holmgren said to his knowledge, there was no such agreement. Ms. Cashwell said that if the tower were put across the street that would be expanding Town property. Chairman Manos disagreed. Ms. Cashwell said that if the pole were moved, the agreement the Town has with AT&T to share the pole would cease to exist; Mr. Holmgren agreed but said there was not really a formal agreement in place. Mr. Holmgren and the Board also discussed replacing the current foundation for the pole, the logistics of physically changing the pole's location and how communications would work during a changeover.

Dean Tyer, 118 NE 46th Street: Mr. Tyer said that he is here for a neighbor at 116 NE 46th Street, next to the AT&T building. He said his neighbor was very concerned about having a large tower next to his house, the potential negative impact on his property value and the potential danger of the tower falling. He said that another neighbor was concerned about it as well.

Mr. Jenkins said that he wasn't interested in rewriting the ordinance to accommodate this one request when it could affect other properties in the future. He said that he would prefer to leave the tower where it is. Ms. Pacula said that she thought that AT&T and the Town ought to work this out.

Mr. Carpenter made a motion to deny the request for text amendment. Mr. Germaine seconded and the motion passed unanimously.

Chairman Manos said that it did not make sense to him to make such a change in the ordinances now when the draft UDO will likely be adopted soon. He said it would make more sense to have the tower replaced where it is now.

Mr. Jenkins left the meeting at 11:48.

Mr. Carpenter made a motion to deny the CUP, Ms. Cashwell seconded and the motion passed unanimously.

Chairman Manos asked Assistant Police Chief Tony Burke to answer some questions. Ms. Stites reminded the Board that the motion for the text amendment and CUP had already been denied. Chairman Manos said there were still questions and asked Assistant Chief Burke what the Police Department's preference was regarding the pole. Assistant Chief Burke said that the department has just one small antennae on the pole at this point.

Chairman Manos said that he spoke with Dale Holland. Mr. Holland's had requested a contract amendment as he had gone "way over" the contract in working with the CPAC and on the UDO. Mr. Holland will not be present for another UDO meeting. The revised draft UDO will be provided to the Planning Board. Chairman Manos asked the Board members to review the document once they receive it. Mr. Holland will be present for the Council meeting Public Hearing.

Mr. Vares reported that the rezoning and the tree ordinance sent to Council were not approved.

Chairman Manos asked staff what they thought about allowing people to speak during the Council meeting as specific items are handled. Ms. Stites said that there are opportunities for citizens to speak, during the Public Hearings and during the Public Comment period. Chairman Manos asked if there was a Public Hearing for each agenda item; Ms. Stites said Public Hearings were only required for certain topics. She said that the purpose of having a Public Comment period was so that there was not debate during discussion of every item, not that people aren't encouraged to speak, but that at some point, it has to be a Council discussion. Chairman Manos said that Council did not have the opportunity to hear from people interested in a specific topic; he said he thought Council should hear from people interested in the topic while they are discussing it. Mr. Carpenter said that for the rezoning Public Hearing, that Ms. Gulledge had the chance to speak but declined. He said that she did not speak on her own behalf but that the person sitting next to her did speak. He said she could have spoken but she chose not to. Chairman Manos said that what he was suggesting was a change in the way Council does business. He said that this is the only place that he has seen things handled this way. Ms. Stites said she thinks that people have that opportunity. The agenda is published, and the agenda is set, with any additions or deletions, before Public Comments. Ms. Pacula asked about the rezoning hearing for Lucas Cove, and said that applicant spoke during the hearing. Ms. Stites said he signed up or asked to speak. Ms. Cashwell said that Council's Rules of Procedures state that there will be no back and forth comments; Ms. Stites said that was correct. Mr. Carpenter said the only time there was back and forth comments is when Council asks someone to speak during discussion; Ms. Stites agreed and said that was in Council's discretion to do so. Mr. Vares said that if he recalled correctly, the Mayor asked if there was anyone else who wanted to speak before the hearing was closed; Chairman Manos agreed that the Mayor does do that. Mr. Vares also said that he includes the Planning Board's recommendation in two places on his staff memo to Council and if he is called to speak on the topic.

Ms. Cashwell made a motion to adjourn at 12:07 p.m. Chairman Manos seconded the motion and it passed unanimously.

_____
Ted Manos, Chairman

Attested: _____
Lisa P. Stites, CMC
Assistant Manager/Town Clerk

TOWN OF OAK ISLAND
PLANNING BOARD
AGENDA ITEM MEMO

New Business No: 4

Date: July 28, 2017

Issue: Rezoning Request

Department: Planning & Zoning Administrator

Presented by: Jake Vares

Estimated Time for Discussion: 40 Minutes

Subject Summary:

Attached you will find an application to rezone property located at the corner of McGlamery and Price Street from CB (Commercial) to R-6MF (Residential Multi-Family). This is a citizen initiated rezoning application and the parcel number is 250DA038. The property is adjacent to the R-9 and CB zoning districts as you can see from the attached map. Since this is a legislative decision, if there is a conflict of interest (being a financial interest) the Board member may not vote, would be allowed to participate in the discussion, but should not as a best practice. The conflict of interest is not whether the board member has the ability to be unbiased but rather if there is a reasonable perception of partiality by the applicant or otherwise.

North Carolina land use law prohibits imposing individual, site-specific conditions on a regular rezoning to a conventional zoning district, which is what this is. In addition, any special conditions imposed on a conventional rezoning—such as requiring a buffer strip of a certain size—is not enforceable. The reason being is that adding in a condition is similar to requiring a standard, and if it is not uniformly implemented throughout a zoning district for a certain type of land use then fairness as well as legal issues arise. In other words to sum up essentially boards cannot attach conditions to a legislative rezoning

SPOT ZONING ANALYIS

Spot zoning is the practice of zoning a relatively small area, usually owned by a single person, differently from the surrounding property. Spot zoning is not technically illegal, it can be done if it is determined to be reasonable. The burden is on government to demonstrate reasonableness. Spot zoning has been defined as a zoning classification that singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, so as to relieve the small tract from restrictions to which the rest of the area is subjected. As mentioned before this zoning pattern is not inherently illegal; however, the burden of proof does shift to the city to demonstrate a reasonable basis for its zoning decision.

The public hearing record and minutes of the board's deliberations should reflect consideration of legitimate factors for differential zoning treatment of the property involved. Does the property have different physical characteristics that make it especially suitable for the proposed zoning, such as peculiar topography or unique access to roads or utilities? How does this fit with any relevant adopted town land use plan? Would the proposed range of newly permissible development be in harmony with the legitimate expectations of the neighbors? What implications would this have for future development on surrounding parcels? Is there justification for the rezoning beyond the fact that desires the rezoning?

Factors relevant, established by case law, to the reasonability of spot zoning include:(1) the size of the tract in question, (2) the compatibility of the disputed zoning action with an existing zoning plan, (3) the benefits and detriments resulting from the zoning for the owner of the parcel, his neighbors, and the surrounding community, and (4) the relationship between the uses envisioned under the new zoning and the uses currently present in the adjacent tracts.

SIZE

Spot zoning occurs when a relatively small tract of land is zoned differently from the surrounding area. There have also been cases where a relatively large tract of land, 50 acres, was deemed to be spot zoning (Good Neighvoers of South Davidson v. Town of Denton). The reason being was because all of the surrounding properties had thousands of acres of a significantly different zoning district, which by comparison made the 50 acres small. The inverse of that concept also holds in a scenario where a 5-acre rezoning in a dense urban setting with numerous zoning districts may not be spot zoning.

Upon doing research for this rezoning request staff discovered a table the School of Government published that shows the previous spot zoning court cases that have been upheld by vs invalidated by parcel size. The results were mixed with a few outliers but the general trend was the larger the property the more likely the spot zoning is upheld and the smaller the property the spot zoning is invalidated. Most of the parcel sizes listed were multiple acres in size and not the smaller size of the parcel in question with this application. No specific minimum or maximum size of an area constitutes spot zoning. The size of the parcel must be considered relative to the surrounding area. If the size of the zoning district is sufficiently large, the rezoning is simply not spot zoning. In the North Carolina cases that have resulted in invalidation or rezoning's as illegal spot zoning, the size of tracts involved has ranged from 0.57 acres to 50 acres. The general rule is that the smaller the parcel, the more likely that the rezoning will be invalid.

COMPATIBLILTY WITH PLAN

A key factor in assessing whether the rezoning is reasonable and compatible with the existing comprehensive land use plan. Whether set forth in a formal comprehensive land use plan or reflected in an overall zoning scheme, zoning regulations must be based on an analysis of the suitability of the land

for development (e.g., topography, soil types, wetland locations, and flood areas), the availability of needed services (e.g., water, sewers, roads, infrastructure), and existing and needed land uses.

To the extent that a rezoning or spot zoning fits into a preexisting plan that is based on this type of analysis, it is much more likely to be upheld. A common rationale cited by courts for invalidating spot zoning is that there was no discernable reason to single out a parcel for a different zoning district classification. If special features are identified on the site that make it more suitable for the new zoning district, then that serves to provide justification for the spot zoning.

Past spot zoning court cases have invalidated a rezoning request because it was found to be in conflict with the stated goals and polices set forth in the jurisdictions land use plan. The town board needs to directly discuss how this rezoning is justified if the towns land use plan call for a different development pattern. The land use plan is not binding and does not prevent the town from approving the rezoning petition, but the inconsistency must be acknowledged and discussed. If the town decides to go forward with the rezoning, the board needs to explain why it considers this to be in the public interest.

BENEFIT AND DETRIMENTS

Another important fact to consider in spot zoning is who benefits and is harmed by the rezoning and what are the relative magnitudes of the benefits/harms experienced. In a spot zoning challenge the courts may be sympathetic to a rezoning that confers considerable benefit to the owner and only modest harm to others and vice-versa. The identified benefits to a community must be real and substantial, not merely convenient.

RELATIONSHIP OF USES

The other major factor in spot zoning analysis is the relationship between the proposed uses and current uses of the adjacent properties. The greater the disparity, the more likely the rezoning is to be held illegal. A common example of this would be an industrial use versus being surrounded by light residential land use. It is not spot zoning where the difference in the zoning districts is very modest. For example, in Childress v. Yadkin County, the court held that the Restricted Residential (RR) and Rural Agriculture (RA) zoning districts were sufficiently similar to avoid a spot zoning characterization.

The rezoning of an individual lot from a single-family and multi-family residential district to a business district was upheld in Nelson vs Burlington. In this instance the majority of property directly across the street was already zoned for business use, and the court concluded that, given the prevalence of business zoning in the immediate vicinity of this lot, there was some plausible basis for the rezoning. The adjacent parcels on all sides are zoned CB, R9, no R-6 Multi-Family zoning is adjacent or close to the parcel in question.

This spot zoning criteria may be met if there is a reasonable basis to believe that the rezoning will promote the general welfare by conserving the values of other properties and encouraging the most appropriate use. The rezoning, when determining if it is spot zoning, needs to be considered within the larger community context. Spot zoning can be involved when the proposed new zoning requirements for the small area are either more or less strict than those for the surrounding area. The key element is that the proposed zoning is different from the other surrounding zoning districts, thus creating an inharmonious land use pattern. The adjacent properties have similar land uses, so that is a consideration to evaluate.

SPOT ZONING SUMMARY

The leading North Carolina case on this point (Chrismon v. Guilford County), laid out the following test for reasonableness of spot zoning: Among the factors are the size of the tract in question; the compatibility of the disputed zoning action with an existing comprehensive zoning plan; the benefits and detriments resulting from the zoning action for the owner of the newly zoned property, the neighbors, and the surrounding community; and the relationship between the uses envisioned under the new zoning and the uses currently present in adjacent tracts.

Staff understands this analysis may be long and detailed but it was written in a way to explicate spot zoning issues. The heightened scrutiny of spot zoning applies when there is the appearance of possible discriminatory treatment (either favorable or negative) for a few, rather than a decision based on the larger public interest. This particular rezoning case is complex and difficult because some of the criteria is met, in staff's opinion some is not, and some of the criteria can be argued both ways. Many of the adjacent properties have similar land uses that is allowed in the R-6MF zoning district. The size of the property is problematic given the small size of the parcel. The Land Use Plan can be both in support and contrary to the rezoning. In staffs opinion this would create a spot zoning issue. Since not all the spot zoning criteria appears to be met and an argument could be made the other way with some of the other criteria, staff would consider this rezoning request an illegal spot zoning and would recommend denial.

While it is not unusual for a planning board or governing board to be curious about the identity of an applicant or land owner, that is rarely relevant to a zoning decision. Zoning decisions need to focus on what the potential land use impacts will be, not who is generating them. More broadly, the courts have emphasized that land use regulations must be based on the land use impacts of property use, not the identity of the users of the property.

If adopted all the allowable uses codified for the R-6MF zoning district will be permissible for the property. The decision must be based on suitability of land for all potential uses in the district; not on any proposed or promised development. If an owner promises the governing board that the new zoning would be used only for a particular project that promise is not binding. Once the property is rezoned, the owner (and anyone the person may sell the property to) can undertake any use permitted in the new zoning district.

It is important include in the motion "and the associated plan consistency statement", otherwise if appealed, the courts could reverse the decision (Wally v. Town of Kannapolis). Plan consistency is a factor that must be explicitly considered, but it does not control the outcome of the decision. A Town can adopt a rezoning that is inconsistent with their plan so long as they acknowledge in writing that they know they are doing so and take the time to set out the rationale for their decision. The statutes do not require detailed findings on this point.

Before the rezoning request can be adopted the Town Council must hold a public hearing on the application and vote on it. The Planning Board vote is for an advisory recommendation. Public notifications regarding this property is not required at the Planning Board level but staff has done it anyway in the interest of transparency and thoroughness. By rezoning the property to R-6MF the owner can use and develop the property for a land use that is more desirable to them. Some concerns, but not limited to all, to consider are the impact on neighbors & the neighborhood, noise, lighting, traffic, environmental sensitivity, property values, infrastructure impact, economic impacts, density, neighborhood harmony, utilities, compatibility with the surrounding area, and consistency with the Land Use Plan. One cannot and should not consider ethnicity or income; the decision is about the property, not the owner. The applicant has submitted the application paperwork with a short narrative include. The rezoning map is provided by staff. A simple majority vote is all that is required for a legislative zoning decision such as this.

Attachments: Rezoning application, Justification Narrative, Rezoning Map

Recommendation/Action Needed:

Suggested Motion: Motion to approve or deny the rezoning application and the associated plan consistency statement.

Planning Board Recommendation: TBD_____

Follow Up Action Needed: Update staff report and forward recommendation to Council

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Attachments

REZONING APPLICATION

TOWN OF OAK ISLAND
Planning Department
4601 E. Oak Island Drive
Oak Island, NC 28465

Date: 7-14-17 Fee: $500 - paid - JV

Project Name (if applicable): _____

Any application for an amendment to the zoning map shall be filed with the department of development services at least 45 days prior to the date on which it is to be introduced to the planning board. Each application shall be signed by the property owner or the property owner's agent and be in triplicate. (Sec. 18-335).

Process

This is a legislative decision, if there is a conflict of interest (being a financial interest) a board member may not vote but is allowed to participate in the discussion. Conditions cannot be placed on a rezoning decision. Spot zoning is determined and avoided if identified. A Plan Consistency Statement will be provided by staff and signed by the Town for every rezoning hearing at each board meeting. The application first goes to the Planning Board for recommendation and then to Council for final approval. Notification letters are required to be sent to all the adjacent property owners. A sign has to be placed no less than ten (10) or more than twenty-five (25) days before the hearing date. After the final vote, a zoning decision will be delivered (via email, personal delivery or first class mail) to the applicant.

The Planning Board and Town Council may consider the following when deciding: Impact on neighbors and neighborhood, traffic, environment, utilities, suitability of land, harmony with area, schools, economic impact, tax base increase, spot zoning created, road capacity, adequate infrastructure, community opinion, property values, consistency with the Land Use Plan, future land use map, jobs, public services, buffering requirements (if applicable), environmental impact, site limitations, and consistency with plans and prior decisions. The Board cannot consider ethnicity, income, affordable housing, owner versus renter housing, or who the owner is when deciding.

Section 1: Applicant Information

Petitioner Name: Jerry W. Gordon

Mailing Address:
328 E. Dolphin Dr. Oak Island, NC 28465

Phone: 970-485-9565 Email: KLgordon@earthlink.net

Section 2: Property Owner Information (if different than above)

Owner Name(s): _____

Mailing Address:

_____

_____

Phone: _____ Email: _____

Section 3: Property Information

Street Address and/or Description of Location:

corner of McGlamery St. & Price St

Parcel ID #(s): 250 D A 038

Total Site Acres or Square Feet: 17850

Current Zoning District(s): CB

Proposed Zoning District(s): R-6 MF

Section 4: Diagram

If the proposed change would require a change in the zoning map, an accurate diagram of the property proposed for rezoning showing:

1. All property lines with dimensions and north arrow.
2. Adjoining streets with rights-of-way and paving widths.
3. The location of all existing structures on the property.
4. The existing land uses associated with the property.
5. The zoning classification of all abutting zoning districts.
6. A list of all abutting property owners.

First Citizens Bank (oak Island Dr.)

Section 5: Statement of Justification (Approx. 1 page)

Future Land Use Map Designation: _____

Is the proposed zoning consistent with the Land Use Plan? (Please Circle One): Yes No

Please describe the changing conditions in the area or in the town generally that makes the proposed amendment necessary to the promotion of the public health, safety and general welfare, or that identifies an obvious error in the zoning map based upon the zoning classification or current land use of surrounding properties. Also include an explanation on why the proposed zoning is or is not consistent with the Land Use Plan and other adopted plans (Attach separate sheet if necessary). **Note: The Oak Island Land Use Plan and all maps can be found online at http://www.oakislandnc.com/General-Info.aspx*

Section 6: Applicant/Owner Signature

In filing this Rezoning Petition, I hereby certify that I am authorized to submit this application and that all of the information presented in this application is accurate to the best of my knowledge, information, and belief.

Signature: _____ Date: 7-15-17

GEDDINGS & KLEVA, PLLC
ATTORNEYS AT LAW

8721 East Oak Island Drive
Oak Island, North Carolina 28465

Telephone: (910) 278-8998
Facsimile: (910) 278-8982

June 27, 2017

Town of Oak Island
4601E. Oak Island Drive
Oak Island, NC 28465

Re : Rezoning Request
Owner of Record : Jerry Gordon and Kathy Gordon
Parcel Identification : 250DA238

Dear Sir/Madam:

This letter is in reference to the current request being made Jerry Gordon and Kathy Gordon, owners of the parcel of real property located on Oak Island, NC bearing tax identification number 250DA238, seeking to have this property rezoned from its current zoning of CB to Multi-Family Residential.

The aforementioned property is a .40 acre tract of and located on the corner of McGlamery Street and Prince Street on Oak Island. As mentioned above this tract of land is currently zoned "CB" which allows for commercial and residential mixed use. However, Mr. and Mrs. Gordon desire to have the zoning of this property changed to Multi-Family Residential in order to accommodate their desired use of the property.

In support of this request, Mr. and Mrs. Gordon respectfully submit the following information for consideration by the Town of Oak Island:

1) **Environmental Density:** As mentioned, Mr. and Mrs. Gordon desire to have the zoning changed in order to accommodate their desired use for the property which would be the construction of multi-family housing. Based on the plans for this construction, the environmental impact for this project would be minimal as only two of the existing trees on the property would need to be removed.

2) **Impact on Neighboring Properties**: If the property were to be rezoned as requested and the multifamily housing project was to be built by Mr. and Mrs. Gordon, there would be no negative impact to the surrounding property owners. As mentioned, this tract of land is located at the corner of McGlamery and Prince Street. On the opposite corner of Prince and McGlamery Street there already exists a multi-family residential housing project. The proposed zoning change and multi-family housing project would create a continuity of the existing use of other properties located in that area.

3) **Impact on Property Values:** If the property were to be rezoned as requested the property values of the properties surrounding subject parcel would not be harmed or impacted in any way for the negative. The multi-family residential housing project will create more residential housing units similar to those that are already in existence

in the area, thus raising the surrounding property values as opposed to possibly lowering the property values with the construction of a commercial building or other type of commercial use project in a mostly residential area. Additionally, the rezoning of the property to multi-family residential and the construction of the multi-family residential housing project would result in the creation of individual residential units each having their own tax parcel number and corresponding taxable value. This would result in tax revenue that would be collected by Brunswick County and the Town of Oak Island.

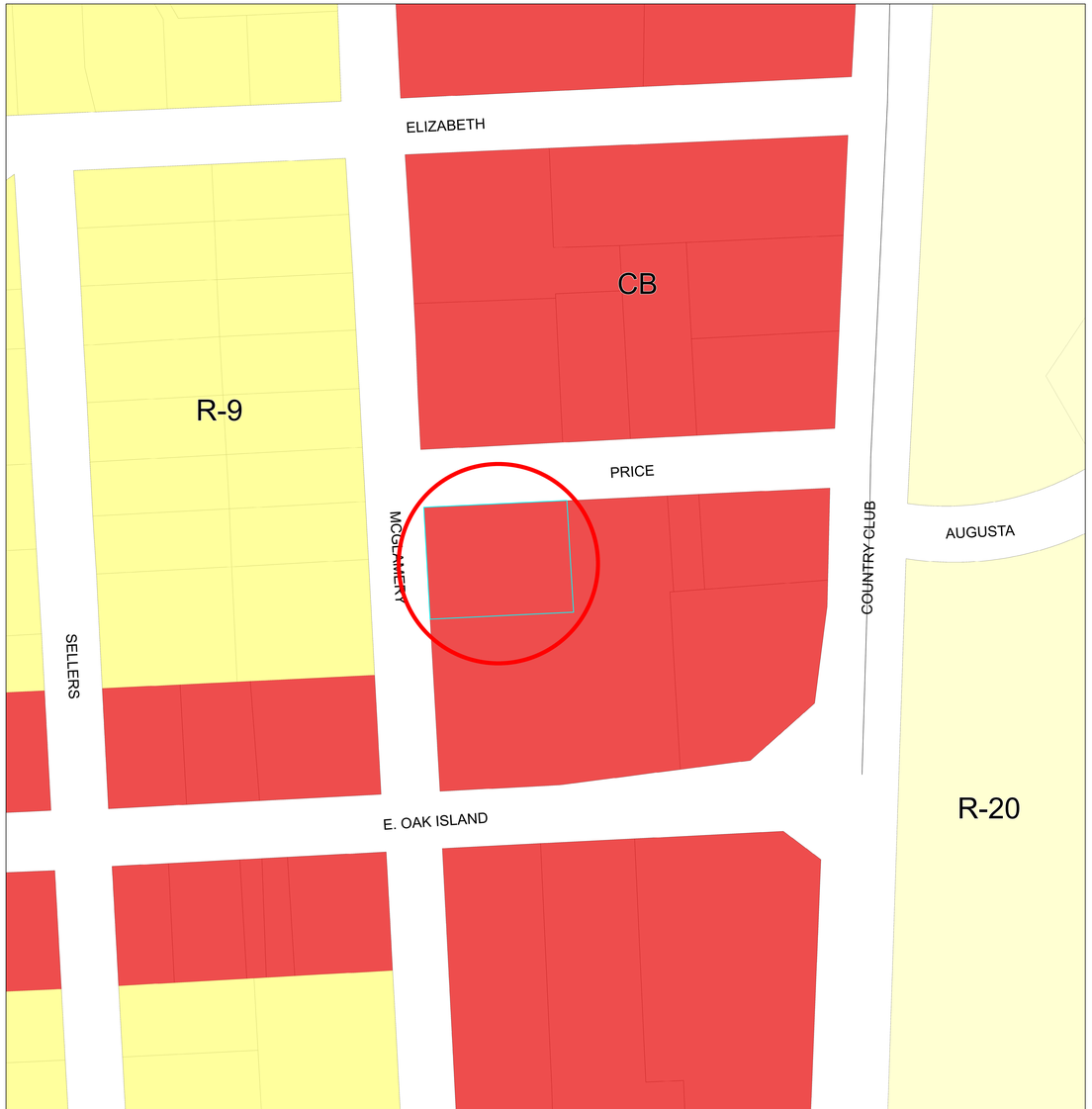
4) **Impact on Traffic on the Surrounding Roadways:** If the property were to be used in a commercial capacity, it would draw more use by the public and more vehicles would be going to and from the property creating an increase in use of the surrounding roadways. If the subject property were to be rezoned as requested, it is upon information and belief that there would not be any negative effect on the traffic on the surrounding roadways. The proposed multi-family residential housing project would result in more regular, limited and predictable use of the surrounding roadways as the vehicles going to and from the subject property would be those of the owners and/or occupiers of the residential units and their guests.

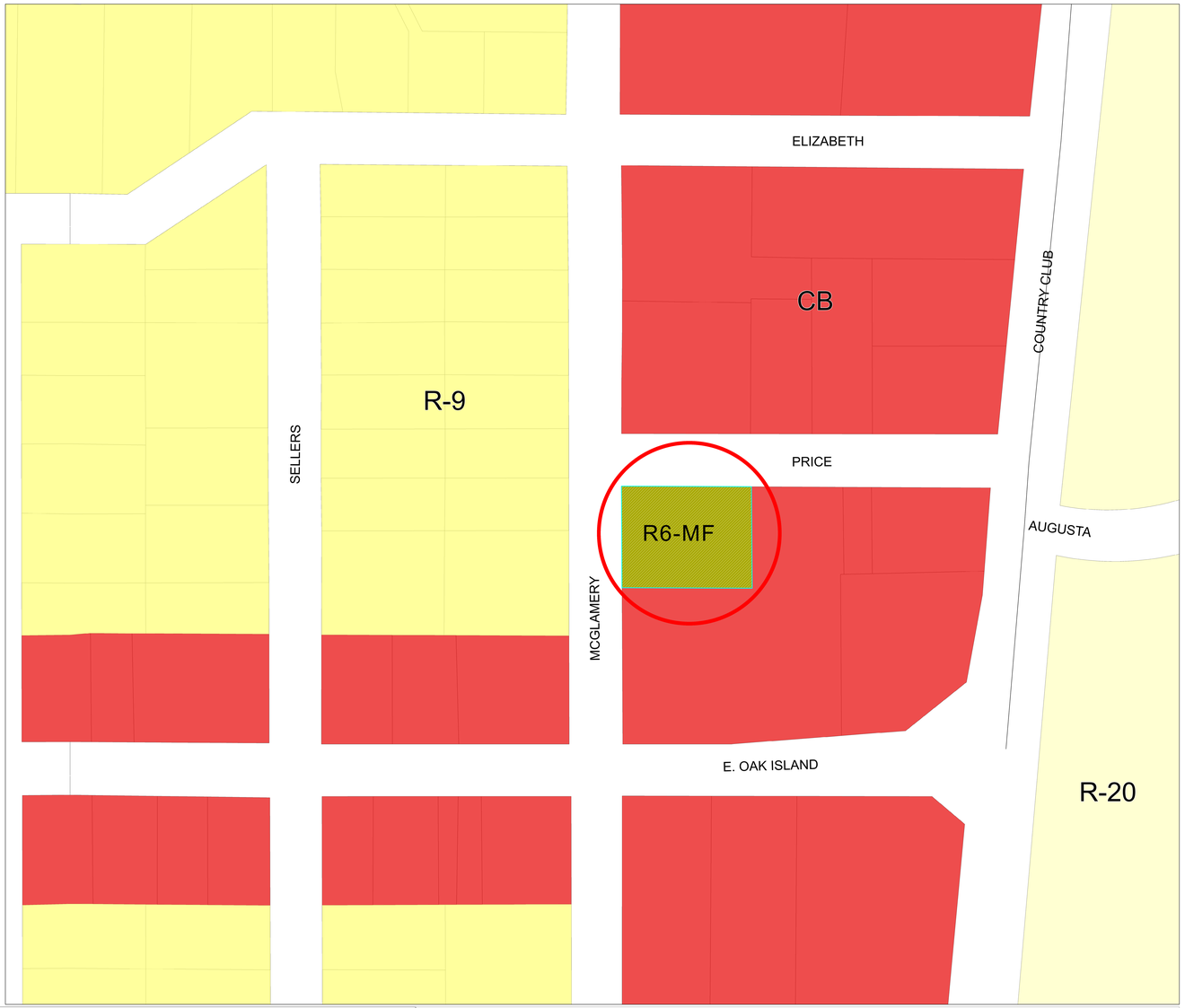
Hopefully the above information will be of assistance to the Town of Oak Island in considering the request of Mr. and Mrs. Gordon to have their property rezoned from CB to Multi-Family Residential. If any further information on the above topics is required please do not hesitate to contact our office.

On behalf of Jerry and Kathy Gordon, I would like to thank you for your time and consideration of their request.

Very truly yours

Greg Kleva





Legend

- Town Boundary
- Parcels

Zoning

- (AD) Airport District
- (CLD) Commercial Low Density
- (CR) Commercial Recreation
- (CB) Community Business
- (OS) Open Space
- R-20 Low Density Residential
- R-9 Medium Density Residential
- R-7 Medium Density Residential
- R-7500 Medium Density Residential
- R-6A Residential District
- R-6B Residential District
- OK-R-6MH

Rezoning Map

Town of Oak Island, North Carolina

Map is to be used to only show the general vicinity. Address numbers cannot be 100% guaranteed for accuracy. Map is to be used for general informational purposes only. Data used to generate this map was gathered from disparate sources.

0 45 90 180 Feet

0 0.005 0.01 0.02 0.03 0.04 Miles

N

Map created by:
Jake Vares
Town of Oak Island
Development Services Department
7/17/2017

Requesting change in zoning district from CB to R6-MF

Regional Bicycle Plan

Please visit the website here:

http://capefearbicycleplan.weebly.com/

And download and review the final draft here:

http://capefearbicycleplan.weebly.com/final-plan.html