

MINUTES
BOARD OF ALDERMEN
JULY 8, 2021

Mayor Mills called the meeting to order at 5:33 p.m. in the Town Hall Council Chambers, 321 Causeway Drive, Wrightsville Beach, North Carolina.

Attendance: Mayor Darryl Mills, Mayor Pro Tem Hank Miller (remotely), Alderman Jeff DeGroot, Alderman Ken Dull, and Alderman Zeke Partin; together with Town Attorney Brian E. Edes, Town Manager Timothy W. Owens and Town Clerk Sylvia J. Holleman.

Pledge of Allegiance

Invocation by Associate Pastor Julia Crone, Wrightsville United Methodist Church.

PUBLIC COMMENTS: SUE BULLUCK – THANKS TO ALDERMAN DULL.

Ms. Sue Bulluck, on behalf of the Chamber, said, "I am here tonight simply to say thank you to Mr. Dull for his contribution. You will get a letter of verification for a W-9. He helped us take care of some of the electrical issues. And, to let you know that we are open on Thursday through Sunday, running with four volunteers; two more are being trained." The Board thanked Ms. Bulluck and also thanked Alderman Dull for his contribution.

MAYOR PRO TEM MILLER ATTENDING REMOTELY.

Mayor Mills said, "Mayor Pro Tem Miller cannot physically be with us this evening; he will be zooming in. I would like to entertain a motion from the Board that he be allowed to participate in and vote on any matters that come before us." Alderman Partin said, "I so move." The motion was seconded by Alderman DeGroot and approved with a 4-0 vote. Mr. Edes said, "Mayor, we do have an applicant for a conditional use permit/special use permit. The applicant is represented by Attorney Grady Richardson. I spoke with Mr. Richardson a moment ago; I'd just like for the minutes to reflect his position on allowing the remote attendance of Mr. Miller." Mr. Richardson said, "I have no objection to it as long as Mr. Miller is able to hear and participate."

CONSENT AGENDA APPROVED WITH A 4-0 VOTE BY MOTION OF MAYOR MILLS AND SECOND BY ALDERMAN PARTIN WITH REMOVAL OF BUDGET ORDINANCE TO COMPLY WITH THE NEWEST AMERICAN RESCUE PLAN GUIDANCE.

- a. Approved Regular and Closed Session Minutes of June 10, 2021.
- b. Approved special event permits as follows:
 1. Cape Fear Habitat for Humanity Turkey Trot Packet Pickup (*1,500 participants*)
Wednesday, November 24, 2021 (*10am – 7pm*) (*pickup 2:00-6:00 pm*)
Location: Town Hall Field
*** Recurring Event
 2. Cape Fear Habitat for Humanity Turkey Trot 5k (*approx. 3,500 participants*)
Thursday, November 25, 2021 (*5am – 11am*) (*race and awards 7:30-10:30 am*)
Location: Town Hall Field. John Nesbitt Loop, North Channel, Coral
*** Recurring Event
- c. Acknowledged previously approved special events for August.
- d. Approved special event date change to show a Surf Movie in the Park on Tuesday, September 14, 2021 instead of September 7, 2021 at 8:00 p.m. This would be a Town-sponsored event.

- e. Adopted Resolution No. (2021) 2244 approving a Police Personally Assigned Vehicle Policy.
- f. Accepted the Donation of Four Benches from Rusty Carter, owner of the Trolley Stop, to be Located Adjacent to the New Restroom Facilities.

ITEM PULLED FROM THE CONSENT AGENDA: COMPLY WITH THE NEWEST AMERICAN RESCUE PLAN GUIDANCE BY RESCINDING CAPITAL PROJECT ORDINANCE NO. (2021) 542-B IN THE AMOUNT OF \$750,000 AND ADOPTING GRANT PROJECT ORDINANCE NO. (2021) 545-B IN THE AMOUNT OF \$814,590.67.

Mayor Mills said he had pulled this item to clarify for the public. He said, “We were given an estimate of \$ 750,000. It is still only an estimate although the estimate has been adjusted upward to \$814,590.67. These are funds coming to the beach. It is still just an estimate; we still don’t know.” Alderman Dull made the motion to approve this item as presented. The motion was seconded by Alderman Partin and approved with a 4-0 vote.

PRESENTATION OF PIVOT PARKING MID-YEAR UPDATE AND CONSIDERATION OF AMENDING THE TOWN’S CONTRACT WITH PIVOT PARKING BY ADOPTING RESOLUTION NO. (2021) 2245.

Mayor Mills said, “This will not be heard this evening. They’ve asked that it be held over as they attend to some matters. But, they will be coming before us next month or the month after and we’ll get our update.”

CONSIDERATION OF RESOLUTION NO. (2021) 2246 APPROVING AN AGREEMENT WITH PAYLOCITY PAYROLL AND WORKFORCE SOLUTIONS FOR THE PROVISION OF EMPLOYEE BENEFITS MANAGEMENT SERVICES AND ADOPTION OF BUDGET ORDINANCE NO. (2021) 544-B.

Mayor Mills stated that Finance Officer Melissa Norton could not attend the meeting tonight but she was able to zoom in to make her presentation.

Mrs. Norton gave the following presentation: “During the interim time between HR representatives, I had the opportunity to do payroll and some of our new-hire onboarding. During that time, Tim and I had some discussions with Paylocity; a vendor that offers a lot of the things that we do and can save us some time and can allow us to be a little more progressive. Leland is a client of Paylocity and we have worked a lot with them to help understand how they utilize it and how it can run all of our payroll. This will allow everything to be in one data base and it would make it easier for people coming into the Town, workers in the Town, and our HR people. Some of the things they can do include: anything from recruiting with 25,000 different places to post jobs; time and attendance that employees can do themselves; benefits admin and open enrollment; training and staying compliant; compensation and performance (reviews and trends). With communication and collaboration, they can make apps available to employees.” Mrs. Norton then reviewed some of the more efficient features being offered by Paylocity. She said, “I realize that this is a sizeable investment. But I’m asking for something that I think we will be able to make up for with what we are not going to be spending. Our savings would be upward of \$25,000 each year. All in all, I’m asking that we take a look at Paylocity as a vendor to help us automate some of our processes. The budget adjustment is for \$30,000 for this year.”

Following a brief discussion regarding the benefits of changing to Paylocity, Mayor Mills said he thought it was a smart way to go and he was fully in favor of it. Alderman Dull made the motion to adopt Resolution No. (2021) 2246 and Budget Ordinance No. (2021) 544-B to allow Town Staff to move forward with the purchase of Paylocity Payroll and Workforce Solutions. The motion was seconded by Alderman DeGroot and approved with a 4-0 vote.

PUBLIC HEARING TO CONSIDER A REQUEST FOR A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 520 CAUSEWAY DRIVE, FOR A HIGH-END CONVENIENCE/SHOPPING STORE/COFFEE SHOP/RESTAURANT.

Mr. Edes said “I just handed Mr. Richardson the minutes from the variance hearing that was conducted on May 27, 2021. Mr. Richardson, is it still the applicants’ position that since the application was submitted prior to July 1st, that the criteria created in 160-D is the criteria that will govern tonight?” Mr. Richardson replied, “Yes.” Mr. Edes said, “This is a quasi-judicial hearing, Mayor and Board, now called an evidentiary hearing. We’re going to conduct it in a manner to ensure that the applicant has a fair and impartial decision-making body. The Board has to base its decision solely on the competent evidence produced during this hearing. I need to ask a few questions of the Board before we get started to make sure you’re fair and impartial. And I’ll ask this to the entire Board; does anyone have a financial interest in the outcome of this application? (All replied ‘No.’) Does anyone have a familial relationship or a close and personal relationship with the applicant? (All replied ‘No.’) Has anyone made a site visit to the site for purposes of assessing this C.U.P. application? (All replied ‘No.’) Has anyone had any ex parte with the applicant about the subject matter of this application; ex parte communication meaning communication outside this hearing? (All replied ‘No.’) Has anyone had any ex parte discussions with staff members about the subject matter of this application? (All replied ‘No.’) Can any of you think of any reason why you cannot be fair and impartial and base your vote tonight solely on the competent, material and relevant evidence produced during the hearing? (All replied ‘No.’)

Technical issues developed with regard to Mayor Pro Tem Miller’s ability to hear and provide input remotely. Mayor Mills called a brief recess at 5:58 p.m. so that the issues could be resolved. The meeting was reconvened at 6:01 p.m. Mr. Edes said, “We’ve been through numerous quasi-judicial hearings but for the record, I have to go through this with you.” Mayor Pro Tem Miller replied, “I heard all of your questions and my answer is ‘No’ to all of them.” Mayor Mills asked Mr. Richardson if he was okay with that and Mr. Richardson replied, ‘Yes.’

Mr. Edes said, “The applicant has the burden of proof. They have to prove the nine criteria or put on evidence that meets the nine criteria that can be found on pages 78-79 of the agenda packet. They’re ‘a’ through ‘i’. All witnesses who wish to testify must first be sworn in and they’ll be subject to cross examination and subject to questions from the Board. Mr. Mayor, I recommend that we go in the following order: have staff introduce the item; allow any cross examination; then questions from the Board; then hear from the applicant; cross examination; questions from the Board; and then any other person sworn in with standing, we’ll hear from them; and they likewise would be subject to cross examination and questions from the Board. At the end of the evidence, we’ll allow the applicant to do a summation. I will then do a brief

inventory of the evidence and allow Mr. Richardson to comment on that inventory. I want to bring to the Board's attention that on May 27th of this year, we had a variance hearing from the same applicant and the Board granted a variance with conditions and the Order was entered on June 30th. The variance pertained to the minimum lot size and setback requirements. So, the setback requirements and lot size are not an issue this evening."

Mayor Mills administered the oath to those wishing to provide testimony. Mr. Edes asked everyone who would testify to identify themselves and their relationship to this application to determine whether they have standing to provide testimony.

Mr. Wilson gave the following overview: "This is a request by Harbor Island South, LLC, the owners, and Bevy Mart, LLC, the tenant. This will be for a high-end convenience/shopping store located at 520 Causeway Drive. This one-story building was built in 1972 and contains approximately 2200 square feet. The space has been vacant for a while. Proposed use for this building will be a restaurant and they're proposing twenty-one seats. It is zoned C-3. The store inside will have the following accessory units: an inside refrigeration unit; a storage unit; a bathroom and counter area with seating. The applicant stated that the hours of operation will be from 7:00 a.m. to 9:00 p.m. seven days a week. This use is considered by staff and our ordinance as a standard restaurant and is permitted in the C-3 District by conditional use. This request is also consistent with the Town's Zoning Ordinance and CAMA Land Use Plan. So, we look at the use as a restaurant and then we said this use could be considered a standard restaurant/coffee shop/convenience store. Again, it is permitted with a conditional use permit in this zoning district. So, the applicant is proposing twenty-one seats. They're going to need nine parking spaces. They have one handicap spot. So, if you do the twenty-one seats; it's one space for every four seats – you get six and then one space for every two employees, which would be three employees – two spaces; so they have a total of nine spaces. The property has existing driveways so no driveway cuts will be on that corner property. We did reach out to our Fire Chief as far as compliance with the New Hanover County Fire Marshal – that's the Chief's main concern. He had stated that they have no issues with the project. Police Chief David Squires stated that the Police Department has no issues with this proposed project. Comments from Mr. Bill Squires from the Public Works Department is if they do any type of food preparation or cooking, this could require a grease trap. And, of course, they're concerned about trash; that would be the next question. As far as our CAMA Land Use Plan Policies, the Town, under Types of Commercial Development Desired, 'The Town will encourage commercial businesses providing basic goods and services to year-round residents and visitors. Examples include appropriately scaled and designed grocery stores, drug stores, sit-down restaurants.' Also number two, 'The Town encourages the improvement, preservation and enhancement of the Town's neighborhoods.' On page 70, you will see the findings. The Planning Board's recommendation for this project is based on the findings in consideration of the general requirements. The requirements and findings are stipulated in Section 155.4.5.4(E). You'll see those nine findings on page 70. Landscaping and Buffering; the question was asked to the applicant – the plan is to leave the low-lying rocks, especially there on Causeway Drive, and use the existing buffering in place, such as the fence behind the building, a fence adjacent to The Landing Shopping Center. The outside lighting will be updated with LED lighting. And

they have to meet the Town’s ordinance. This did go to the January 5, 2021 Planning Board meeting. At that meeting, we had a discussion and the members voted unanimously to forward a favorable recommendation for the conditional use permit for the Bevvly Mart, located at 520 Causeway Drive, with conditions. You’ll see those conditions in a few minutes. After this went to the January 5th Planning Board meeting, staff was trying to set this for the next Board of Aldermen meeting. This was on the Consent Agenda that night and Alderman Ken Dull removed the Consent Agenda item for Bevvly Mart’s conditional use permit. After discussion of the text amendment and the conditional use permit for the Bevvly Mart, a motion was made to send the agenda item back to the Planning Board. The issue was, we wanted to see how many properties this would have an effect on. So, we went back in February and March and discussed this at length with the Planning Board. It was a good discussion for those two meetings. So, at their February 2nd meeting, the Planning Board did have this discussion. We looked at the properties that were less than 10,000 square feet only in the C-3 District. After this discussion, we found there were a total of fifteen properties less than 10,000 square feet. On page 71, you’ll see the properties in the C-3 District that are less than 10,000 square feet.”

From Page 71 of the Agenda Packet		
1 Marina Street	Existing lot used for parking.	Lot Area 8276
4 Marina Street	Existing office building.	Lot Area 3485
6 Marina Street	Existing marina office.	Lot Area 8712
8 Marina Street	Existing duplex.	Lot Area 8276
Lot 29 A Short Street	Parking lot.	Lot Area 7841
100 Short Street	Office building	Lot Area 9349
Lot 25 A Keel Street	Parking lot.	Lot Area 7841
220 Causeway Drive	Lighthouse Beer and Wine	Lot Area 5663
222 Causeway Drive	Surf Berry	Lot Area 5663
224 Causeway Drive	Mellow Mushroom	Lot Area 9978
520 Causeway Drive	Causeway Market - vacant	Lot Area 8147
534 Causeway Drive	Zeke’s	Lot Area 3421
602 Causeway Drive	Real estate office.	Lot Area 1742
Lot 1 Live Oak Drive	Parking lot.	Lot Area 7499
96 West Salisbury Street	Retail office.	Lot Area 4387

Mr. Wilson continued, “We looked at those properties for two months that were less than 10,000 square feet and just now bringing this back to the Board of Aldermen for review. There was a text amendment required for this conditional use permit. You see that the applicant’s attorney decided to seek a variance and that’s what they did. At the May 27, 2021 meeting, a variance was granted with conditions for the minimum lot size, side and rear yard, and conditions for the property located at 520 Causeway Drive.” (Conditions listed below.)

Planning Staff and Planning Board Recommended Conditions (from page 72):

1. The applicant must obtain all necessary state and local permits.
2. The applicant must comply with all Town ordinances.
3. No outside music allowed.
4. All deliveries shall occur between 8:00 a.m. and 8:00 p.m.
5. The dumping of trash and bottles shall occur only between the hours of 8:00 a.m. and 8:00 p.m.
6. The property owner and tenant shall sign affidavits confirming that they will not apply for an ABC permit to operate a private club.
7. No outdoor seating (except one six-foot bench)

8. No onsite alcohol sales.
9. No spirituous liquor sales.
10. No gas sales.
11. No trash dumping on Sundays.
12. No deliveries on Sundays.
13. No onsite cooking.
14. At least two trashcans outside.
15. Operating hours 6:00 a.m. until 10:00 p.m.
16. After three noise complaints, the Conditional Use Permit will be reviewed.
17. No skateboarding onsite.
18. Landscaping and building rehabilitation should be similar to the rendering.

Conditions of Variance Approval (from page 90):

- A. If the Encroachment Agreement between the Applicant and the Jacarusos is ever adjudicated to have been violated by the Applicant or if the existing building on the Property is razed or demolished, then that portion of this variance applicable to the Property's rear yard setback requirement (along its southern line) would remain valid so long as the encroachments into the Jacarusos' property is eliminated.
- B. There shall be no onsite consumption of alcohol on the Property.
- C. Should the existing structure on the Property be renovated, all such renovations shall comply with applicable statutes, ordinances and regulations regarding renovations of structures in flood-prone areas.

Mr. Wilson continued, "In summary of this, the majority of the residential and commercial lots in Wrightsville Beach are nonconforming due to the lot sizes in the commercial districts. There are permitted uses and conditional uses allowed. The permitted uses are less restrictive to setbacks and lot size. For example, for office building, there's no minimum lot area except for the C-5 Commercial District. The conditional use requires properties to be at least 10,000 square feet and a minimum of 100 feet wide in Commercial Districts 1-4. Typically, the conditional uses you'll see at Wrightsville Beach are going to be the restaurants, marinas, convenience stores and churches. Again, there are fifteen properties that are less than 10,000 square feet. You see the Planning Staff's and Planning Board's recommended conditions. The first six are typically staff's recommended conditions – typically, we put these with all the recent C.U.P.s that we have issued. From seven through eighteen, typically this came from the Planning Board. And we did put a number of conditions on there and you can add some conditions to that if you choose to. Public notice, this meeting ran on June 17, 2021 and June 21, 2021 in the Star News. The site was posted on June 23, 2021. And we sent out adjacent property owner letters on June 24, 2021. Staff recommends that the Board of Aldermen review the conditional use permit for the Bevvly Mart located at 520 Causeway Drive and consider the request. Attachments, you've got the application and plans, the Planning Board's Statement of Consistency, the Order granting the Variance, and we included our definition of a restaurant."

Mr. Edes said, "Mr. Wilson, would you proffer pages 69-92 of the agenda packet as Exhibit A? I believe those are the pages that relate to this application." Mr. Wilson replied, "Yes." Mr. Edes asked Mr. Richardson if he had any objections. Mr. Richardson replied, "No, I would also move that into the record as well." Mr. Edes said, "Receive pages 69-92 into evidence as Exhibit A without objection." Mayor Mills said, "Received."

Mr. Edes asked if Mr. Richardson had any cross examination of Mr. Wilson at this time. Mr. Richardson said, "Mr. Wilson, I'm Grady Richardson. I represent the

applicant. Is it staff's position that the applicants have satisfied all of the Town's requirements for submission of a full and complete conditional use permit application for consideration by the Town's Board tonight?" Mr. Wilson replied, "Yes." Mr. Richardson said, "Is it staff's position that the application complies with the Town's CAMA Land Use Plan?" Mr. Wilson replied, "Yes, with those two that I mentioned, yes." Mr. Richardson said, "Is it staff's position that the application complies with the Town's zoning ordinances with the variance in place?" Mr. Wilson replied, "Yes." Mr. Richardson said, "I have no further questions." Mr. Edes said, "Is there anyone else who was sworn in that would like to cross examine Mr. Wilson? Madam Clerk, let the record reflect that no one suggested that they wanted to cross. I have a few questions but I'll wait until after any questions the Board may have of Mr. Wilson."

Mayor Mills asked if any Board member had questions for Mr. Wilson. Hearing no response, he said Mr. Edes could proceed.

Mr. Edes said, "I understand you gave a full, comprehensive staff report about the text amendment being sent back and all of that, but for purposes of tonight's hearing, you would agree that the variance takes the lot size and the setbacks – that they are not at issue tonight?" Mr. Wilson replied, "Yes." Mr. Edes said, "In your capacity as the Planning and Parks Director for the Town of Wrightsville Beach, did you analyze the application and the nine criteria?" Mr. Wilson replied, "Yes." Mr. Edes said, "Do you have a position as to whether the application meets that criteria?" Mr. Wilson replied, "It does meet them, yes sir." Mr. Edes said, "That's your position, sir?" Mr. Wilson replied, "Yes."

Alderman Partin asked when would be the right time to discuss a couple of questions and suggestions that she had about the recommended conditions. Mr. Edes replied, "You can ask Mr. Wilson if you'd like. The conditions are in the evidence now. During discussion, I'd like to address a couple of the conditions – the legality of them. But you can ask him now if you'd like. If there are conditions that you think Mr. Wilson would be the appropriate person to address, then I would go ahead and ask Mr. Wilson." Alderman Partin said, "In particular, there's number eight and number nine. 'No onsite alcohol sales and No spirituous liquor sales. Obviously, number nine, we know that they can't sell alcohol; that's on the ABC Board. But, the onsite alcohol sales, are they not going to be intending to sell beer and wine for offsite consumption?" Mr. Wilson replied, "For offsite, I would think they are, yes." Mr. Edes said, "That's a condition of the variance as well." Alderman Partin said, "Does that make sense? I know number nine, to me, doesn't make sense. I used to be on the ABC Board, so that does not make sense to me."

Alderman DeGroot said, "I think clarification is that there's not going to be any onsite alcohol sales per the variance – correct?" Mayor Mills said, "Onsite consumption." Alderman Partin said, "You could just basically say that they would not allow a younger manager to apply for an onsite ABC license. Then that would take care of it." Mr. Edes said, "That's a legal question and I would ask that we would amend the agenda to go into closed session for me to provide legal advice on that condition. But, that would be after we hear all of the evidence and before we start deliberations."

Mr. Edes asked Mr. Richardson if he had any cross based on that testimony. Mr. Richardson replied, “No.” Mr. Edes asked if anyone else had any questions for Mr. Wilson based on that round of testimony. (There was no response.)

Mr. Richardson asked if Mayor Pro Tem Miller could hear him okay. Mayor Pro Tem Miller replied, “I can hear you fine, Grady, and I’ve heard everything everybody has said. I keep getting muted and I can’t un-mute myself.”

Mr. Richardson said, “My name is Grady Richardson and I along with Jennifer Carter represent the applicants before you today. I have with me the principals of the applicants, Kelly Barnes, her adult son Mason Barnes, Chris Batten and his wife, Michaela. We also have Darryl Jones and we have Mike Saied with us as well. To the extent there are any technical questions that are asked, I’ll be happy to offer up Darryl and Mr. Saied to answer those in conjunction with my clients. At this point, coming into today, on June 23rd, we submitted in addition to the C.U.P. application that’s before you, we also attached the May 27, 2021 variance packet; the January 5, 2021 Planning Board hearing packet; the two updated site plans with the date of February 11, 2021; the staff report of June 30, 2021; the Board of Adjustment Order which was entered on June 30, 2021 – it was verbally entered on May 27, 2021 as well as the May 27, 2021 minutes. And I would move those all be entered collectively as Exhibit B, recognizing that – I believe the staff reports have already been marked as Exhibit A.” Mr. Edes said, “I don’t have any objections as the Town Attorney. We will receive all of that in. Do you have that listed out?” Mr. Richardson replied, “Yes.” Mr. Edes said, “When I inventory the evidence, if you’ll just read it back again, that will probably be the quickest way to do it.”

Mr. Richardson continued, “The matter before you tonight is to take a building that has been in existence since I was born, forty-nine years ago, and make it a functioning building with a high-end convenience store that’s going to sell high-end goods, not just a general convenience store. They’re going to have sundry items, things for a neighborhood store that would be of benefit and a positive asset to the surrounding community on Harbor Island. In fact, Mr. and Mrs. Batten live within a house and a half of the back of the building. No exterior changes are planned other than beautification and improvements. The landscaping will be minimal; to keep with the line of site; it’s still going to be enhanced. We had some renderings that are part of the packet that I just identified. The lighting is going to be increased from the standpoint of environmental reduction of impact. It’s going to be directed downward and away from residential homes. And it will be a place that, I think, will be a nice improvement to what is there now. I don’t want to belabor the point but we do believe, per the staff as well, that I’ve yet to hear, even at the variance, any opposition to the application. We do believe we’ve satisfied the nine requirements to be granted a C.U.P. The application, to date, has been unopposed by anyone outside of the community and I would reserve the ability to cross examine anyone who may stand up and oppose tonight’s application. But, given that it is unopposed; given the staff says it’s compliant with your ordinance and CAMA Land Use Plan, as well as the nine conditions, we believe that we’ve met our burden of a C.U.P. and we would respectfully request that it be granted. I’m happy to answer any questions.”

Mr. Edes said, “That was a presentation, I don’t know that I’m going to subject you to cross examination but I do have some questions.”

Mr. Richardson said, “What I’ll do for the questions, if it’s okay with you Mr. Edes, is I’ll probably identify who would be best on our side to answer those questions.” Mr. Edes said, “Does anyone that’s been sworn in have any questions for the applicant?” When a member of the audience raised his hand, Mr. Edes said, “Yes, sir. If you’d come on up and identify yourself and your relationship to the property or the application.”

Mr. Harold King said, “My name is Harold King. I live at 10 Island Drive. I’m a neighbor. One of the things that’s kind of missing is some information out here. We’re at a public hearing but we’re not hearing much of the story, unless we know from a previous thing. One of the things I would like to ask Tony for – for storm water – what are the conditions that are going to be proposed? We don’t have those. There were no handouts except the agenda. So, we’re kind of handicapped.” Mr. Richardson gave his agenda packet to Mr. King. Mr. Edes said, “Mr. King, in addition to page 72, the conditions of the variance that was issued can be found on page 90. The ones on page 90 are already in place with respect to the variance. The ones on page 72 are the ones proposed by the Planning Board but as this hearing is in process right now, other than the variance conditions, there are no conditions because the permit has not been approved as of this moment.” He asked if there were any other questions of the applicant. (There was no response.)

Mr. Edes said, “Mr. Richardson, I have a few questions and I believe they’re going to be for, is it Mrs. Batten who testified at the variance hearing?” Mr. Richardson replied, “Yes.” Mr. Edes said, “And do you have a copy of the Board of Adjustment minutes?” Mr. Richardson replied, “Yes.” Mr. Edes said, “I just want to confirm a few things. Good evening, Mrs. Batten.”

Mr. Richardson said, “Identify yourself.” Mrs. Batten said, “I’m Michaela Batten, good afternoon.” Mr. Edes said, “At the top right, you’ll see the page numbers. If you would turn to page 10.” Mr. Richardson said, “Her page numbers are on the bottom of the minutes.” Mr. Edes said, “Okay, tell me when you get to page 10. Do you see, three paragraphs up from the bottom, it has ‘M. Batten?’ Mrs. Batten replied, “Yes, sir.” Mr. Edes said, “If you’ll read that to yourself – my question is this – is it not true that at the Board of Adjustment hearing, you indicated that you, being the variance applicant and the applicant tonight, had no intentions to have people sit and stay. The seats were because you do intend to have grab and go food. Is that your testimony?” Mrs. Batten replied, “Correct. So, we were saying the option of if someone came in, there’ll be foot traffic from the Loop, they’re biking and they need to simply sit and open their bottle of water or it could be to eat their sandwich and throw their trash away before they get back on their bike and they complete their Loop journey. Or if someone comes in with their husband and they’re shopping and simply staying five minutes.” Mr. Edes said, “Right.” Mrs. Batten said, “It would be that sort of situation. There is no intention that they’ll just sit.” Mr. Edes said, “A transient-type seating.” Mrs. Batten replied, “Yes.” Mr. Edes said, “And that’s the intention?” Mrs. Batten replied, “Correct.” Mr. Edes said, “And if you’ll turn to page 11, in the middle of the page you’ll see Mayor Pro Tem Miller who was Chairman Miller during this hearing asked – ‘It worked because there weren’t any seats in there’ – referring to the prior use of the property. Do you see that?” Mrs. Batten replied, “Yes.” Mr. Edes said, “And your answer was ‘Right’; is that right?”

Mrs. Batten replied, “Yes.” Mr. Edes said, “And then right beneath that, you again were talking about seating.” Mrs. Batten replied, “You’re asking if that’s what I was referring to?” Mr. Edes replied, “Yes, ma’am. About halfway down in that..” Mrs. Batten said, “Yes, that’s correct.” Mr. Edes said, “And I’m going to quote this; I believe your testimony was ‘But we do not intend – as business owners, we know firsthand we’re not turning over like you turn over a restaurant table but we want to have people in and out as quick as possible because we’re trying to have shopping and not have people sit and stay’. Did I read that correctly?” Mrs. Batten replied, “That is correct.” Mr. Edes said, “Was that your testimony?” Mrs. Batten replied, “Yes.” Mr. Edes said, “And is that the applicant’s intent in operating this business?” Mrs. Batten replied, “Yes.” Mr. Edes said, “Okay. If you’ll look farther down the page, Mrs. Koballa asked you about outdoor seating at the very bottom of the page.” Mrs. Batten replied, “Yes.” Mr. Edes said, “And then your response was there was going to be one outdoor bench, is that right?” Mrs. Batten replied, “Yes.” Mr. Edes said, “Is that still the applicant’s intention?” Mrs. Batten replied, “Correct.” Mr. Edes said, “Kind of the same theme, if you’ll look on page 14 in the middle of the page, you again testified at the variance hearing that the applicant does not intend to have people come and sit and stay. It’s out of pure convenience, etc., etc. Did I read that portion correctly?” Mrs. Batten replied, “Is it the larger paragraph?”

Mr. Edes replied, “Yes, ma’am.” Mrs. Batten replied, “Yes.” Mr. Edes said, “I believe at one point, you indicated that you thought the number of indoor seating would be around fifteen. Is that right?” Mrs. Batten replied, “Yes and at this point I was going to say I’m not sure what the final number was. Because you said twenty-one, which I was confused about because I thought we had reduced it, but he said in today’s meeting....” (A lot of people talking at once.) Mayor Mills said, “Let’s let one person talk.” Mr. Edes said, “What I’m asking you about is what you testified at the variance hearing right now.” Mrs. Batten replied, “Yes.” Mr. Edes said, “So, if you’ll turn to page 20 at the top of the page; actually, this is Mr. Richardson’s comments: ‘What’s before you tonight is less; there are fifteen seats’. Is that accurate?” Mr. Richardson replied, “...It started out as a capacity at twenty one; then it dropped to seventeen; and I think the most recent plans from February show fifteen seats” Mr. Edes said, “Yes, sir. And lastly, again, Mr. Richardson, if you’ll look at page 18 in the middle of the page – halfway down in that larger paragraph, you indicated – ‘We agreed to those plus no gas sales, no outdoor seating except one bench, no onsite cooking of food, no deliveries of trash pickup on Sundays, the hours will be 6:00 a.m. to 10:00 p.m., no on-premises alcohol, max of three citations for noise violations, etc., etc.’ That’s an accurate rendition of your statement to the Board of Adjustment at the variance hearing, is it not?” Mr. Richardson replied, “That’s an accurate rendition of my statement to the Board of Adjustment on May 27, 2021. I believe Mrs. Batten can confirm that that’s the applicant’s desire.” Mr. Edes said, “Is that the applicant’s agreement?” Mrs. Batten replied, “That is correct.”

Mr. Edes said, “Mr. Mayor and Mr. Richardson, that’s all I had and I thank you and Mrs. Batten. Grady, I’ll give you a chance for rebuttal evidence after we hear from everyone else who signed in. Does anyone else who has been sworn in wish to provide testimony on this application? If so, please come forward, identify yourself and your relationship to the property or the application. We’re taking any other testimony provided that you have standing.”

Ms. Sue Bulluck said, “You’ll determine whether I have standing or not. Sue Bulluck for the Chamber. We are here to talk to you wholeheartedly...” Mr. Edes said, “Ms. Bulluck, I would say, Mr. Richardson, I believe as representative of the Chamber that she would have standing; do you agree or disagree?” Mr. Richardson said, “Which Chamber are we talking about?” Ms. Bulluck replied, “The Wrightsville Beach Chamber of Commerce.” Mr. Richardson said, “I’m fine with it.” Mr. Edes said, “And she said she’s going to testify in support.” Mr. Richardson said, “I’m fine with it.”

Ms. Bulluck said, “We all talk about how Wrightsville Beach used to be. We all like what Wrightsville Beach used to be. And we are in support of this because, initially, when the Mitchells made The Landing out of the ground some six years after this building was established, there were a variety of businesses in there....; it was the hub for Harbor Island and it is what we have envisioned, if you will all recall, in our Land Use Plan in the last update where we had business elements in each of the residential areas. This is a great service for Harbor Island and for visitors who might bicycle. But it is one of those things that seems to us to fit in the nature of the community. Everyone that lives on Harbor Island knows that complex was there; knows this building was there. No one in the neighborhood came without the realization that it was there. It is a business that will serve as a community business and we support that.” Mr. Edes said, “Does anyone wish to cross examine Ms. Bulluck? Madam Clerk, let the record reflect that no one wishes to cross examine her. Any Board members have any questions of Ms. Bulluck?” Mayor Mills asked if the Board members had any questions. All replied, “No, sir.”

Mr. Edes said, “Mr. Richardson, do you have any objections to receiving into evidence as Exhibit C, the pages in reference to the Board of Adjustment minutes that I asked questions on?” Mr. Richardson replied, “No.” Mr. Edes said, “Mayor, I recommend we accept into evidence as Exhibit C, the Board of Adjustment minutes from May 27, 2021 without objection.” Mayor Mills replied, “So received.”

Mr. Edes said, “Does anyone else wish to provide testimony regarding this application? If so, please come up.” Mr. Harold King said, “I’ve been living on that street for fifty years... This sounds like it’s going to be a good place; a nice place. And I echo what Sue said that it will be an asset to the community and I look forward to it getting there and it not being a vacant store anymore.” Mr. Edes said, “Does anyone wish to cross examine Mr. King? Madam Clerk, no one wishes to – and I’m assuming the Board doesn’t either. All right, if anyone else who’s been sworn in would like to provide testimony, please come up, identify yourself and your relationship to this property or application. Madam Clerk, it doesn’t appear anyone else wishes to provide testimony. Mr. Richardson, would you like to offer a rebuttal or summation.” Mr. Richardson said, “I’ll be happy to offer a summation for the record.”

Mr. Richardson said, “The applicant before you tonight has met its burden at establishing the grounds on substantial, material and competent evidence for this Board to grant the conditional use permit that is being sought and has been unopposed. For the record, we’ve got Exhibit A which is the staff report of June 30, 2021, previously identified by Mr. Wilson. Then for Exhibit B, we could do this as Exhibit B1 – the applicant’s C.U.P. application and Exhibits B-E, I believe; Exhibit B2 would be the May 2021 variance packet; Exhibit B3 would be the January 5, 2021 Planning Board hearing packet; Exhibit B4 would be the two updated site plans by the

applicant dated February 11, 2021; Exhibit B5 would be the Board of Adjustment Variance Order which was entered at the hearing on May 27, 2021 and reduced to a written Order on June 30, 2021; and then Exhibit B6, the official minutes from the Board of Adjustment meeting of May 27, 2021. And then you've got the sections that you identified and the cross examinations – Exhibit C." Mr. Edes replied, "Sure and if you're going to introduce the whole packet as B6, I'll just withdraw to avoid duplication, Mr. Mayor, the introduction of the former Exhibit C."

Mr. Richardson said, "I'll just end by saying my clients are extremely excited about the opportunity of being an asset to the community. They don't take it lightly when folks like Ms. Bulluck and Mr. King have stood up here in support and they will do everything they can to make sure it is a success."

Mr. Edes said, "Any questions of Mr. Richardson? All right, in addition to the exhibits Mr. Richardson just accurately identified, first we heard from Mr. Tony Wilson; he introduced the item; he was subject to cross examination as well as questions by the Board. We then heard from Mr. King who asked some questions and we directed him to the proposed conditions of the Planning Board and the actual conditions of the variance. We then crossed the applicant or I asked the applicant a few questions. Mrs. Batten provided some testimony and Mr. Richardson answered some questions as well. We then heard Ms. Bulluck who spoke in favor of the application. We then heard again from Mr. King who spoke in favor of the application. We did not hear from any witnesses in opposition to the application. Mr. Richardson, would you like to comment on my inventory of that evidence?" Mr. Richardson replied, "I believe it is accurate."

Mr. Edes said, "Mr. Mayor, at this point, I recommend we close the evidentiary portion of this hearing and begin deliberation." Mayor Mills said, "Any objections? We will close the public hearing portion (6:43 p.m.) and we will begin deliberations."

Mr. Edes said, "I just would remind the Board that if there's some questions about the Planning Board's proposed conditions, I think we would need to go into a quick closed session so I could provide legal advice. We cannot deliberate in closed session but I can provide legal advice in closed session. And I'll leave that to the Board." Mayor Mills said, "Does anyone feel the need to discuss the Planning Board's conditions; not deliberate on our decision but to discuss..." Alderman Partin said, "I would like to discuss it." Alderman Dull said, "To be clear, it's not all eighteen but it's kind of added on top of staff's – whatever Tony said was the number. Like number seven through eighteen, maybe. Because we have Planning Staff and we have Planning Board and they're all combined together." Mr. Edes said, "Right. Let me put it to you this way: there's at least one condition that I would like to give legal advice on of those eighteen, or however we're numbering, at least one that I think merits an attorney/client privileged discussion." Alderman Partin made the motion at 6:45 p.m. to go into closed session to get advice from the Town Attorney on these conditions. The motion was seconded by Alderman Dull and approved with a 4-0 vote. The Board then moved the closed session to the Town Hall Conference Room for advice from the Town Attorney.

Following the closed session, the Board returned to Council Chambers and Alderman Dull made the motion to go back into open session at 7:10 p.m. The motion was seconded by Mayor Mills and approved with a 4-0 vote.

Mr. Edes said, “Madam Clerk, for purposes of the minutes, no action nor deliberations occurred during closed session. It was simply the provision of legal advice. Mr. Mayor, before we begin our deliberations, I recommend that the Board not consider proposed conditions six or nine on page 72 of the agenda packet.” Mayor Mills asked Mr. Richardson if he followed that. Mr. Richardson said, “...Is it the advice from the Town Attorney not to impose conditions six and nine?” Mr. Edes replied, “Correct.” Mayor Mills replied, “That is correct.” Mr. Edes said, “By and large, some of that is already by agreement addressed in the variance conditions. So, other than that, we should begin our deliberations.”

Mr. Edes said, “As I’m sure you’re aware, Mayor, being legally trained, under North Carolina Law, for a C.U.P. or an S.U.P., the applicant has the burden of proof to come forward with evidence. The uncontested evidence is that they meet the criteria. However, the Board can append reasonable conditions related to those nine criteria in the issuance of the permit.” Mayor Mills said, “Does the Board wish to proceed and go through each separate criteria, one at the time, or do I hear a suggestion otherwise?” Alderman Dull suggested doing it collectively.

Mr. Edes said, “I believe there was one discrepancy on hours of operation. I believe the applicant applied for seven to nine and then the Planning Board recommended six to ten.” Mayor Mills said, “Correct.” Mr. Edes said, “Which is less restrictive.” Mayor Mills said, “I’m not sure why the Planning Board did that.” Mr. Edes said, “You can go with what the applicants agreed to, seven to nine, if you’d like.”

Mayor Mills said, “Do I hear any comments or discussion on that?” Mr. Richardson said, “If I may be heard on the hours of operation or have the applicant come up and clarify what they’re looking for?” Mr. Edes said, “Yes. Well, I’ll advise the Mayor to do that but first, let’s go through some deliberations, Grady, because there may be other items that we’ll need clarification on from either you or the applicant.” Mr. Richardson agreed.

Mayor Mills said, “Any other items, Mr. Edes, that you know we immediately should take under consideration?” Mr. Edes replied, “Well, there were some issues expressed, I know, at the Board of Adjustment hearing...” Mayor Pro Tem Miller asked if Mr. Edes could hear him. Mr. Edes replied, “Yes. Can you hear me?” Mayor Pro Tem Miller replied, “Yes. I didn’t know if y’all felt like going through the list. I had some questions and I didn’t know if this was the time to ask them or not.” Mr. Edes replied, “Well, I’m pointing out my recollection of the evidence in some areas that were discussed at both the variance hearing and tonight. There were some questions about the seating in general – the number of seats. As I recall, the applicant’s testimony both tonight and at the variance hearing, their intention is not to have sit-down dining. There were twenty-one seats proposed. Tonight, there was a discussion about fifteen seats. I recall, at the variance hearing and those minutes are now into the evidence as introduced by the applicant, you had some questions about seating?” Mayor Pro Tem Miller replied, “Yes, sir. So, we did go back and forth on that. At our meeting of the Board of Adjustment, actually, somebody asked about the twenty-one seats and we went back to fifteen because that’s what was presented to us that night and we had to deal with the information that was in the packet. However, my concern, and it’s difficult not being there to follow everything but I followed it. I have been able to hear y’all well.

So, I live in the neighborhood and I've got two kids and I'm excited about this building being opened back up and the uses that they've proposed. But my two concerns – and I think we've answered one. One of them was about what happens outside the building and it sounds like we've dealt with that with the conditions with noise and all that. But my concern goes back to the seating. We've heard twenty-one; we've seen fifteen. I refer, and I assume you have this, Mr. Edes, there's some discussion on page 11, and I asked Mrs. Batten to come back up on page 24 specifically about the seats. There was some reference to not needing the seats as far as business plans are concerned and they were simply recommended by Mr. Wilson based on the parking spaces. Where are we on that? I've heard you talk about it tonight and I heard you talk about it the last time and that is my main concern."

Mr. Edes said, "Does any other Board member have any comments on that before we open back up the hearing to hear from the applicant?" Mayor Mills said, "Well, I was going with Hank. I think we're all interested in this thing coming to fruition. We just want to make sure it is done in a way that's not injurious to the neighborhood. And the testimony, at least at the Board of Adjustment hearing, seemed to diminish the value or lessen the importance of having the seats. The testimony was a little bit back and forth, testimony from the applicant as to the necessity of having the seats. And I think my concern is, if the real intent is for it not to be a place where there's going to be congregation and potentially get into noise and traffic and all that kind of stuff..... and, I heard testimony of several places and the Board of Adjustment seemed to agree with that approach. But, we've got these proposed plans showing, obviously, the number of seats they show. I think what Mayor Pro Tem Miller is saying, and what I'm saying, is that is a concern; the number of seats."

Mayor Pro Tem Miller said, "If I may add one more thing, one of the things that we discussed in the Board of Adjustment meeting, there were some of these items that were intended for this meeting and this application had already been applied for. They would not be dealt with, obviously, at that meeting. So, we didn't do anything or say anything or ask anything about the seats and I think it's appropriate. I take it by their submission, or by the lack of submission of anything else, that they still intend to have the fifteen seats. So, I guess the question is, is that still the case?"

Mr. Edes said, "Anybody else on the Board wish to discuss that issue before we open it back up to Mr. Richardson and his client?" Alderman DeGroot said, "I'm just concurring with Hank and Mayor Mills concerning the seating from the minutes from the Board of Adjustment that are a bit confusing. I think there's nobody here that doesn't want this building to get the use. It's an eyesore that needs to be fixed and I want to support Mason who is a good steward of Wrightsville Beach on this project. For me, it's the outside; the onsite alcohol consumption – that's taken care of but the seating is very confusing from what's been presented and what is said in the quasi-judicial meeting, especially page 11 which says we don't have any plans for the seating. So, it's a bit confusing for me on this issue and I think Mayor Pro Tem Miller and honestly Mayor Mills have that same concern." Alderman Partin said, "I concur with what you said,"

Mr. Edes said, "I would recommend at this point that we reopen the evidentiary portion of the hearing and allow the applicant to address the hours of operation, the

discussion on seating and the Planning Board's and Planning Staff's proposed conditions." Alderman Dull made the motion to reopen the evidentiary hearing at 7:25 p.m. Mayor Mills asked Mr. Richardson if he was good with that. Mr. Richardson replied, "Yes, sir." The motion was seconded by Alderman Partin and approved with a 4-0 vote.

Mr. Richardson said, "As I understand it, on the hours, I believe we had requested at the Planning Board, that it be expanded to 6:00 a.m. to 10:00 p.m. and I believe the Planning Board unanimously recommended those hours. I don't know that they are wed to those hours or not. I'll let Michaela, probably, come up and speak to that issue. Also, just to get clarification for this Board, we want to hear about the seating. Is the confusion or the concern that it was twenty-one and we're not sure if it is still twenty-one or if it's fifteen? Or is the concern that you don't want seating at all? They do plan on serving prepackaged sandwiches and having some coffees and smoothies. It has received the designation as a restaurant because that's the only definition that staff finds to be in the ordinance that touches upon convenience store-coffee shop type of establishment. I guess I can understand loitering outside and the outdoor seating and the noise and that sort of thing, but my understanding is the Fire Marshal didn't have an issue with any aspect of the application. And I think the Fire Marshal is the one who governs the maximum occupancy of the building. I don't think we're looking for maximum seating on the inside but I can certainly see something akin to a coffee shop like the Starbucks where you go in there and get your coffee and you hang out for five or ten minutes at a corner table or at a chair at the bar on the inside. I guess I am missing the safety concerns or any other concerns with it being fifteen seats, because I'm pretty sure Michaela can tell you that they're applying for fifteen seats. I don't think they have developed their business model to the point of really knowing what's going to work in terms of an interior layout for seating. The fifteen she said is more than enough. I don't believe she's looking at doing more than that. And, it's allowed for twenty-one. I guess it would help me and it would probably help Michaela if that's addressed and concerns of the Board and Mayor Pro Tem Miller to know what the concerns are about fifteen seats, if that's the concern, so that she can then best address that.

Mr. Edes said, "Grady, before we bring the witness up, I personally did not attend the Planning Board meeting but I am looking at page 78 of the agenda packet; the actual application did apply for hours of 7:00 a.m. to 9:00 p.m. I'm not disputing that that may have been orally amended at the Planning Board, I just wasn't there. But, for the record, the actual application that I'm looking at on page 78 has 7:00 a.m. to 9:00 p.m. And, Mayor Mills has stated concern about the seating, I think, that bears on criteria two about whether having a lot of seating, however you want to qualify that or quantify that, would be injurious to the use and enjoyment of other property in the immediate vicinity such as the more people congregate there, more than likely, you know how people don't always obey parking laws and things like that and what effect, if any, that would have on the adjacent residential neighborhood's enjoyment and use of their property. I'm just trying to frame what I think the issue is. Does that..." Mayor Mills replied, "Yes, sir." Mr. Richardson said, "I hear you and right next door we have what's getting ready to be a brewery, I think, that backs right up to residential that has outdoor seating, at least I think it does. I would think that would be more of a concern than a coffee shop or a convenience store having fifteen seats. Again, they

might come up here and say they don't have to have any seating even though it's a coffee shop and a restaurant definition."

Mayor Pro Tem Miller said, "Correct me if I'm wrong but the next door operation has a conditional use permit in place and it has specifically about the outdoor seating."

Mr. Richardson said, "Address the hours of operation." Mrs. Batten said, "I do believe that that was correct saying that we came with the shorter hours and they did recommend going longer which we agreed with because we would rather go ahead and have the option in the season, during the summer when it's still nine o'clock and light outside. If someone's outside grilling and they need something at nine o'clock, we're not closed during the summer hours, we'd have the option to be open at ten. Will we always be open to ten, probably not; we'll probably shorten those hours off season. But at least we'd have the option and we did agree with that. So, that was where the hours were addressed. And then moving forward to seating, I was under the impression we had reduced it to fifteen. We are totally fine with reducing the seats. Do we need seats at some capacity? I strongly think we do. Can we reduce them more than fifteen? If that's what you guys feel comfortable with, I think we can obviously discuss that; that's fine with us. But you said we have no real intention; seat by seat, there is no table, there's no serving, there's no waitresses, there's none of that. We do need the seating like on an afternoon when the kids are on the way home from school, there's five kids and two moms that say you guys have your ice cream for five minutes while I go get the chips that I'm going to have for dinner or I go get the sodas or whatever it is. Like you said, there's going to be coffee, there's going to be foot traffic. We do need some seating indoors. On the other end of that spectrum, too, we want more room for merchandise. If the seats are totally unnecessary to us, we're not going to have them there. If you tell us we can have fifteen seats but once we get over there and we get things in there, we don't know if we need fifteen seats. We could put a whole wall of merchandise there that's going to turn money for us. We're not going to put seats there just to put them there. So, of course, we're open to that discussion. That's not an issue at all. Twenty-one seats can get out of the question and we can just start with the fifteen and move from there. Unless someone has a question."

Mayor Mills asked if anyone had any questions for Mrs. Batten. Mayor Pro Tem Miller said, "I just have the same question that I had before. It's not up to me to determine how many seats they will need. We want it to be successful but if they don't need fifteen along that wall that she's saying they're going to use for concessions – it's not an argument, it's just a question." Mr. Edes said, "In my opinion, and hopefully Mr. Richardson would agree, if the Board and the applicant can come to a number that they both can live with, that would certainly make it easier on both parties. So, if fifteen is too many, is eight too many; is nine too many? Does someone have a proposal as to less than fifteen but more than zero?" Mayor Mills said, "Don't get hung up on that because from what she just said, they don't have their interior plan in place. That all could change. The question is just the total number of seats." Alderman Dull said, "I'm going to defer to Hank, he's been in the middle of this." Mayor Mills said, "Hank, do you have a suggested figure?" Mayor Pro Tem Miller replied, "..... I don't know.... If we didn't have any tables but we had seats, is eight enough? I don't know....Six to eight?"

Mrs. Batten said, “I’d feel comfortable with twelve and we could reduce it somewhat but still stay about ten. Is that not possible?”

Mr. Richardson said, “You do have an ordinance that you all have passed as policy and the law for this Town for the number of seats you can have in a building based on the number of parking spaces. And that formula that’s uncontroverted says that we can have twenty-one seats – safely – per your formula. My folks are saying that despite the twenty-one seat maximum, they’ve offered to come down to fifteen. There is no, to my knowledge, no interior site plan that’s required for the C.U.P. application.” Mayor Pro Tem Miller said, “When it gets right down to it, the whole intention, that we have heard since day one was to reopen back what they had andso, there were no seats in the one we had before. And they’re now at twelve seats and, based on page 11 and page 24 of the testimony, that we don’t need. So, I hear you and I ask, now there are twelve based on the Board of Adjustment minutes that we don’t need.....” Mr. Edes said, “The seating requirements that Mr. Richardson and Mr. Wilson are referring to are uses as a matter of right. This is the C.U.P. and the law is clear that in a C.U.P., you can append reasonably related conditions to the criteria that must be met. So, I think there’s a legal distinction between a use as a matter of right and a use allowed by virtue of a C.U.P.”

Mr. Richardson said, “I don’t disagree. What I’m getting at is, the C.U.P. application met all the requirements for being considered and there was no requirement that we come up with a site plan for the interior to be fixed and rigid as to what’s going to go inside. Moving forward, they may not want any seats because she wants foot traffic coming in and buying bubble gum and not sitting in there and congregating over a small coffee. You’re right, reasonable conditions. I’m just tying to what’s on the books and you’ve decided ‘reasonable’ is based on a parking allowance, what can be inside seating. We’ve got a restaurant designation because the zoning ordinance doesn’t define ideally a convenience store/coffee shop. So, I’ve got the complying with the parking formula and there’s no requirement for an interior site plan to be fixed. They’re offering that despite the maximum of your formula, to come with fifteen if you all think that fifteen is going to be that much of a safety concern, even though we’ve got the restriction to be up to three noise violations. I’m sure they would be happy to entertain something less than fifteen. It could be that they get in there and fifteen starts to cause a problem because there’s spillage of loitering, and I would imagine Tony or someone else – the Zoning Code Enforcement Officer – could come by and cite them for that sort of issue as well.”

Mrs. Batten said, “My only concern with reducing it, I just don’t want to come in and say can we have five seats and then we do open up and there’s like a little corner that’s totally unused and it’s right by the corner of where the coffee is. And it’s seven o’clock in the morning and we haven’t been busy yet and there’s two people who want to sit and have their coffee in this corner because it’s a little nook. I just don’t want to underestimate. I do agree that twenty-one can be too much and I am okay with reducing it. But, at the same time, I don’t want to underestimate and do five or six seats and then have to come back here and say, can we have three more seats. So, I was just trying to negate that. But the seats, in the scheme of things, we are open to changing it and, talking about how they were and we’re just coming to replace the business that was there and they had no seats; we do want to have a little bit more of

an elevated experience. We want people to feel a little bit more comfortable; a little more at ease when they come in. But, at the same time, get their items and go. I think the seating that we're asking for is simply to enhance the overall elevated community and vibe."

Mr. Richardson said, "Michaela, are y'all still wanting to be stuck on the 6:00 a.m. to 10:00 p.m. on the hours?" Mrs. Batten replied, "Yes. I would like to keep the option to have a 6:00 a.m. to 10:00 p.m. with the option to change seasonally, if that's possible. But we're open to those as well."

Mr. Edes said, "I had two thoughts, and again, I don't vote, but with respect to the number of seating, if the Board is inclined to reduce it lower than fifteen and you open your operation and there are no issues. Since I've been Town Attorney, we've amended at least four C.U.P.s – Tim, does that sound about right?" Mr. Owens replied, "At least, yes." Mr. Edes continued, "So, if you reduced to say eight and there are no issues over there and you came back and requested an additional four seats or a number of seats, that's an option." Mrs. Batten said, "Okay." Mr. Edes continued, "And as far as the timeframe of operating, you could kind of split the baby on that; in the summer months allow the longer hours of operation and then in the winter months, reduce it to the seven to nine." Mayor Pro Tem Miller said, "We have many, many C.U.P.s that we have done with the hours and I'm wondering if the Planning Board meant for the six to ten to be on the weekend and then the other hours on the weekdays. I don't know but I'm okay with whatever we've done in other places but it typically is an earlier hour on the weekdays and a later hour on the weekend. That might be what the Planning Board intended but that's what we've been requested to do in the past." Mr. Edes said, "I don't want you to speculate what their intention was." I'm just saying this is a quasi-judicial hearing." Mayor Pro Tem Miller replied, "If we're going to call it a restaurant, then that's what our ordinance says and all that kind of good stuff, then I was just saying factually, not speculating, that we have done, right next door, serving hours. And that we can go six to ten on the weekend and then seven to nine or whatever; it might be one way to do this instead of trying to split hairs."

Mrs. Batten said, "I think I'd rather keep it six to ten and we're going to do six to ten because I've had businesses before and it's hard to switch the hours day to day. I'd rather keep it consistent. And as far as seasonally, of course we're open to go ahead and close during the off season. But again, with a business, it's really hard to tell traffic until you've been open for a year."

Alderman Partin said, "Mr. Edes, if we give them the C.U.P. and say your hours are six to ten, as a manager, can she make that executive decision as a business owner to say, I really don't need to be open until seven?" Mr. Edes replied, "Absolutely." Alderman Partin continued, "So, we're just giving them the range and she can make her own business decision." Alderman Dull said, "It's the same with the seating." Mr. Edes said, "This is what is allowable, not what's mandated. Could you live with, and I don't know what they're going to agree or not, could you live with eight seats?" After conferring with her husband and their attorney, Mrs. Batten replied, "I think our real comfortable number is twelve. That's what we would really like to stick to. Would that work or is that a 'No'?"

Mayor Pro Tem Miller said, “Brian, let’s take your example and do it the other way; give them the twelve and if we have to reduce it because of noise – you said something about eight..... If we have a problem we’ll reduce it. Can we do that?” Mr. Edes replied, “It depends on the nature of the problem. I think, in the real world, Mayor Pro Tem Miller, if you agree to twelve, it’s going to be twelve – a maximum of twelve. I would not bank on some potential outdoor problem. That’s a legal discussion that we would need to have in closed session. It sounds to me, though, that the applicant is willing to accept the condition of a maximum of twelve seats. Is that correct, ma’am?” Mrs. Batten replied, “Yes.”

Mr. Edes said, “Are there any other questions of the applicant regarding hours of operation or maximum seating?” The Board members replied, ‘No.’ Mr. Edes said, “I have a question for Mr. Richardson and the applicant or whoever you designate. Grady, the Planning Board conditions minus the two that we took out; do you have any objections to those conditions?” Mr. Richardson asked if his clients had any issues with the conditions that were talked about. Mr. Edes asked if they needed time to confer with their attorney or to read the conditions again. Mrs. Batten replied, “No, I think we were okay with them – yes, we’re okay with them.” Mr. Edes said, “So, my recommendation is to remove conditions six and nine. So, the remaining sixteen recommended conditions, the applicant is amenable to or agreeable with. Is that correct?” Mr. Richardson replied, “That’s correct.” Mrs. Batten replied, “Yes.”

Mr. Edes said, “Any further questions of the applicant by the Board?” The Board members replied, ‘No.’ Mr. Edes said, “Mr. Mayor, we need a motion to close the reopened evidentiary portion of this hearing.” Alderman Dull made that motion at 7:45 p.m. The motion was seconded by Alderman Partin and approved with a 4-0 vote.

Mr. Edes said, “As I understand the testimony, Mayor, that you heard what I just heard and Board members, the applicant is agreeable to all eighteen of the conditions with the exception of the two that I requested we remove, and that’s conditions six and nine that were recommended by the Planning Staff and the Planning Board. The applicant is amenable to a maximum number of seats within the structure of twelve. So, it would be a total of seventeen conditions if you add the condition of a maximum number of seating of twelve. And the variance itself has a few conditions on it as well. Any other deliberations would need to be on any additional conditions related to the criteria because the applicant has brought forth evidence. Staff does not disagree that they’ve met the criteria. So, the only thing left to deliberate on is any additional conditions in furtherance of the criteria.” Mayor Mills said, “I don’t think we have any further conditions for discussion, Mr. Edes.”

Mr. Edes said, “A motion to approve with as many of those seventeen conditions as the Board desires.” Alderman Partin said, “I move we approve the conditional use permit for 520 Causeway Drive with the sixteen conditions set forth by our Attorney, plus the additional condition of a maximum of twelve seats.” Mr. Edes said, “Do you understand the motion, Mr. Richardson?” Mr. Richardson replied, “I do.” Mayor Mills said, “That’s the original less the two plus the one.” The motion was then seconded by Alderman Dull and unanimously approved. (Mayor Mills verified Mayor Pro Tem Miller’s vote verbally.)

DISCUSSION AND CONSIDERATION OF APPROVING A REQUEST BY SEA GRANT NORTH CAROLINA TO BE ABLE TO DEPLOY A SENTINEL INSTRUMENT TOWER PRIOR TO AN ANTICIPATED LANDFALL OF A HURRICANE.

Mr. Owens said, “Sea Grant North Carolina is working in conjunction with a group out of the University of Florida to deploy a Sentinel Instrument Tower wherever they think landfall of a hurricane is going to happen. Basically, it’s an anchored 33-foot tower that looks like a flagpole with all kinds of devices attached. They want to apply for a CAMA permit.” Following a brief discussion regarding the process, Mayor Mills made the motion to approve the request by Sea Grant North Carolina to deploy the Sentinel instrument Tower. The motion was seconded by Alderman Partin and approved with a 4-0 vote.

APPOINTMENTS TO THE WRIGHTSVILLE BEACH MARKETING ADVISORY COMMITTEE: THREE APPOINTMENTS WITH TERMS TO EXPIRE JUNE 30, 2022 AND TWO APPOINTMENTS WITH TERMS TO EXPIRE JUNE 30, 2023.

Using ballots, the Board made the following appointments and reappointment to the Wrightsville Beach Marketing Advisory Committee with three terms to expire June 30, 2022 and two terms to expire June 30, 2023. Mayor Mills noted that Mayor Pro Tem Miller had submitted his tie-breaking vote remotely

WB MARKETING ADVISORY COMMITTEE APPOINTMENTS	
APPLICANT	VOTE
Susan K. Bulluck: Appointed for a Two-Year term to expire June 2023.	Mayor Mills, Alderman Dull, Alderman DeGroote, Alderman Partin
Robert E. Huckabee IV: Reappointed – Second Term to expire June 2022.	Mayor Mills, Alderman Dull, Alderman DeGroote, Alderman Partin
Amber J. Moshakos: Appointed for a Two-Year Term to expire June 2023.	Mayor Mills, MPT Miller, Alderman Dull, Alderman DeGroote, Alderman Partin
Ryan M. Smith: Appointed for a Partial Term to expire June 2022.	Mayor Mills, Alderman Dull, Alderman DeGroote, Alderman Partin
Nicole R. Succop: Appointed for a Partial Term to expire June 2022.	Mayor Mills, Alderman Dull, Alderman DeGroote, Alderman Partin

DISCUSSION AND DIRECTION ON BIDS FOR THE CORAL DRIVE SIDEWALK PROJECT.

Mr. Owens stated that the Town had received two bids for the Coral Drive Sidewalk Project. The two bidders were: Lanier with a bid of \$330,725 and JYMCO Construction Company, Inc. with a bid of \$279,389. He asked the Board to consider moving forward with JYMCO and allow the Town Attorney to review any documents. Following a brief discussion regarding our experience with this company, Alderman Partin made the motion to accept the lowest bid from JYMCO Construction Company, Inc. as per the Town Manager’s recommendation, in the amount of \$279,389, subject to the review by the Town Attorney. The motion was seconded by Alderman DeGroote and approved with a 4-0 vote.

CONSIDER BIDS FOR NORTH CHANNEL STORM WATER IMPROVEMENTS.

Public Works Director Bill Squires said, “We have been working diligently to try to take care of some of the storm water issues around the Town. Sweeney has been completed with good success; and Myrtle Court has just been completed also and paved. Now we’re ready to move on to the North Channel Avenue project. We received two bids; one from Carolina Civil Works in the amount of \$194,095.00; and one from Heath Grading and Utilities in the amount of \$82,022.50. Staff recommends awarding the contract to the low bidder, Heath Grading and Utilities, with review of the contract by the Town Attorney and permission to issue the Notice to Proceed.” A brief discussion followed regarding the drastic difference in the two bids and Mr. Squires’ satisfaction with the low bidder’s qualifications. Alderman Dull then made the motion to award the bid to Heath Grading and Utilities following legal approval by the Town Attorney. The motion was seconded by Alderman DeGroot and approved with a 4-0 vote.

ORDINANCE NO. (2021) 1830 TO AMEND THE TOWN CODE TO PROHIBIT BUS PARKING OR DROP-OFF FOR SPECIAL EVENTS AT SOME BEACH ACCESS POINTS.

Mr. Owens said, “We had concerns from residents on Southridge because there was a bus dropping off people at a wedding. Basically, we wanted to look at the ordinance and give the Board some recommendations on something that would prohibit on dead-end streets or on residential-type streets – that busses are prohibited as far as any type of special event or wedding or that type of thing. Chapter 98 does not require a public hearing like the UDO text amendment would. Most of these streets are in the middle part of Town between Mallard and Salisbury Streets, then there’s Northridge and Southridge. I would like for the Board to consider Ordinance No. (2021) 1830 that would prohibit parking and also would prohibit dropping off. Katie would still have some discretion in reviewing these, like with twelve-passenger vans. But these are large, Trailways-type busses and maybe some of the trolleys on some of these roads.” Following a brief discussion regarding the fact that there is no parking on a lot of these streets and how people have problems getting out of their driveways, Alderman DeGroot asked how this would affect Katie’s ability to book weddings. Program Supervisor Katie Ryan said some of the weddings got a little bigger than they should have and she was good with this. Alderman Dull made the motion to adopt Ordinance No. (2021) 1830. The motion was seconded by Alderman DeGroot and approved with a 4-0 vote.

ORDINANCE NO. (2021) 1831 TO AMEND THE WRIGHTSVILLE BEACH TOWN CODE, CHAPTER 76, SCHEDULE I TO CREATE A LOADING AND UNLOADING ZONE AT THE END OF KEEL STREET.

Mr. Owens said, “There was a request by one of the property owners, David Floyd, that the area right in front of the end of Keel Street be considered a 10-minute loading zone. Right now, it is no parking. There’s probably room for maybe four cars there. This is all the way by the water.” When asked how this would be policed, Mr. Owens said Pivot would have to enforce the best they can. Alderman Dull made the motion to adopt Ordinance No. (2021) 1831. The motion was seconded by Alderman Partin and approved with a 4-0 vote.

CONSIDERATION OF RENAMING MUNICIPAL DRIVE AND SEAWATER LANE.

Mr. Owens said, “We talked about this at prior meetings.” Mayor Mills said, “This is something that former Police Chief John Carey asked me to look into relative to some

prior folks. I think, upon further consideration, unless this Board wishes to go in a different direction, I would suggest that we put together a small committee to look into the process and where this might lead us in the future before we jump headfirst into this. We probably should have already done that.” He asked Alderman Partin if she would like to head that committee. Alderman Partin said she would be happy to do that. Alderman Dull made the motion to authorize Alderman Partin to name as many citizens as she deems necessary and appropriate to explore this. Mayor Mills asked Alderman Partin to come back in sixty days to report to the Board if she is ready by then.

ALDERMAN DEGROOTE: OTHER ITEMS AND REPORTS.

- We had a zoom meeting with the CVB and we approved the budget for this year. Our first WBMAC meeting of the year is coming up in August. I'll have more to report then. Questions will probably arise about whether we should do the unified plan or not do the unified plan.

MAYOR MILLS: OTHER ITEMS AND REPORTS.

- The Ports, Waterway and Beach Commission will meet next week. I will have a report at our next Board meeting.

ALDERMAN DULL: OTHER ITEMS AND REPORTS.

- No updates to report on the TDA. Last month, we reported that they did approve the budget.
- Compliments to the folks that are taking care of the flowers and plants at the new Salisbury Street Park; they look very good. Alderman Partin agreed and said she had received a lot of compliments about coming in on Salisbury Street.

MR. OWENS: OTHER ITEMS AND REPORTS.

- The new bathrooms may be open on Saturday. We will leave the porta-johns there for a week to make sure everything is working properly.

MS. HOLLEMAN: OTHER ITEMS AND REPORTS.

- Asked Board members to let her know who would be attending the upcoming Board of Adjustment meeting. Alderman Partin and Alderman Dull both said that they could attend. Mr. Owens said Mayor Pro Tem Miller would not be able to attend. Mayor Mills said he would be able to attend.

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE BOARD, THE MEETING WAS ADJOURNED AT 8:10 P.M.

Respectfully submitted,

Sylvia J. Holleman
Town Clerk