

MINUTES
BOARD OF ALDERMEN
JULY 9, 2020

Mayor Mills called the meeting to order at 5:30 p.m. in the Town Hall Council Chambers, 321 Causeway Drive, Wrightsville Beach, NC. He noted that, due to the COVID-19 Pandemic, the meeting was being streamed as well as public participants that were being socially distanced in other rooms.

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

Pledge of Allegiance

Invocation by Planning and Parks Director Tony Wilson

PUBLIC COMMENTS: TIM TAYLOR – SUPPORT FOR THE POLICE DEPARTMENT; MIKE EDMONDS – EXPRESSIONS OF APPRECIATION AND CONCERN; AND MARK BLOOMQUIST – CURBSIDE RECYCLING.

Mr. Tim Taylor, 104-B North Lumina Avenue, said, "In talking with my neighbors, we just wanted to thank all of you – plus our Police Department, Fire Department, Public Works – everybody for everything that you've done for us during the pandemic. You've done your best and we appreciate it. I noticed on the agenda that Captain Bishop was getting a special award that he deserves. I'd like to say a few words about our Police Department. All of our friends and neighbors in Town love and respect our police and we appreciate everything they do. With some of the stuff going on in our cities and towns today where people want to defund the police and they've lost police and police are retiring, we feel lucky to have the police we have. I'm here to ask you, instead of defunding our police, fund them. Our cops need more money. The last I checked, our starting officers were paid less than anyone in the area. If you can find any way, everybody I know is willing to pay more taxes to Wrightsville Beach. We just need funding for our police officers so anything you can do, we'd appreciate it. We do have some ideas for getting some funds for the Town. Maybe we could get together with you and one of the police officers and talk about it. I've seen a couple of new ones around that are in training. We'd like to keep them instead of letting them stay a year and go somewhere else for more money."

Mr. Mike Edmonds, 601 North Channel Drive, said, "I want to thank the Mayor and the Board for a lot of tough times that we had to put up with in the early spring. I think wise decisions were made. I get most of the Town emails and the amount of abuse that you all took was incredible. I have seen another email lately that I'd like to talk about and it pertains to storm water issues. North Channel Drive is one of narrowest streets in Wrightsville Beach. At Fourth Avenue, the storm water drain is above the pavement. Fifth Avenue, we have French drains and they quickly fill up and it becomes a ponding issue there. The only drain on all of North Channel Drive that actually works is at Sixth Avenue. It works but you have three storm drains that pull from a wide area. I don't know what the engineering company has said about what their plans are but I don't see why we can't do some drainage work utilizing the existing right of ways all up and down North Channel Drive. Talking about North Channel Drive, it's a very narrow street and people have built stuff in their fronts. I'll be talking about that later so I won't go over that, but people are continuing to park on the sidewalk. It's a narrow street and people are not able to walk on the sidewalks. My grandchildren come to Town and they have to walk in the road because automobiles are parked on the sidewalk. Contractors are all up and down North Channel Drive. I have to pay to get hangtags every year and decals on my windshields. The contractors down here don't have anything and they're parking in front of my house on the

street. I have to pay but they don't. Something's up with that. They're parking on the grass right of ways; they park their vehicles all day long. I haven't seen a Lanier Parking representative on North Channel Drive in quite a while. I do see police officers quite often. That is excellent but police officers shouldn't be tied up with parking. We need for Lanier to go down and take a look at this and make sure it's right; it needs to be fair to everyone. One other thing, I don't know where our water patrol was this past holiday but we have a lot of young kids between the two bridges getting close to people's piers; high dollar boats – and they're out there in their mom and dad's boats and it's getting very dangerous and it's causing a lot of damage to piers. We just need to enforce more and get more law enforcement on the water because that pier damage needs to cease and desist."

Mr. Mark Bloomquist, owner of Blue Shark Vodka, said, "I want to bring up curbside recycling again. I've spent a lot of my life in the military and for the life of me, I can't understand – there are models. I did talk to the CEO of Waste Management. Recycling doesn't make sense in dollars and cents for them but I will come back and I'll have a plan that I think might work. I live on North Channel and I have a business here. I own Blue Shark Vodka so I'm pretty busy right now. I've owned that house down there for thirteen years and it's getting worse. I see the kids are coming back and all I ask is for you to take a look at it. I think there is money available and I think the sidewalk should be fixed because I see the kids cutting through. And, more importantly, these drains need to be fixed."

CONSENT AGENDA APPROVED UNANIMOUSLY BY MOTION OF MAYOR PRO TEM MILLER AND SECOND BY ALDERMAN PARTIN WITH REMOVAL FROM THE REGULAR AGENDA OF AN UPDATE FROM THE LOT FRONTAGE AD HOC COMMITTEE, AND WITH THE ADDITION OF ITEM F TO THE CONSENT AGENDA TO SET A PUBLIC HEARING FOR AUGUST 13, 2020 FOR CONSIDERATION OF PROPOSED TEXT AMENDMENTS TO CHAPTER 155 OF THE TOWN CODE.

- a. Approved Regular Minutes of March 12, 2020; Budget Workshop Minutes of March 31, 2020; Emergency Meeting Minutes of April 7, 2020; Budget Meeting Minutes of May 13, 2020; and Continued Budget Meeting Minutes of May 19, 2020.
- b. Acknowledged previously approved special events for August.
- c. Acknowledged CARES Act Funds distributed by New Hanover County in the amount of \$18,551 to cover some of the Town's COVID 19 expenses.
- d. Adopted Resolution No. (2020) 2207 to adopt an updated Local Water Supply Plan.
- e. Approved revised 2020 Board of Adjustment Meeting Schedule to cancel the July 23rd meeting.
- f. Set a public hearing for Thursday, August 13, 2020 at 5:30 p.m., or as soon thereafter as possible, for consideration of Text Amendments to the Town of Wrightsville Beach, Title XV: Land Usage, Chapter 155: Unified Development Ordinance, Appendix A, Exhibit A Definitions, Section A.3 Definitions – Lot Frontage and Section 155.6.5: Zoning District Development Standards, 155.6.5.1 R-1 Residential District, D Minimum Front Yard Setback, and, 155.6.5.2 R-2 Residential District, D Minimum Front Yard Setback.

PRESENTATION BY INTERIM POLICE CHIEF RALPH EVANGELOUS OF THE “2020 POLICE OFFICER OF THE YEAR” AWARD TO CAPTAIN JASON BISHOP.

Interim Police Chief Ralph Evangelous presented the 2020 Police Officer of the Year Award to Captain Jason Bishop. He noted that Captain Bishop had been overwhelmingly nominated by his peers. He said, “Captain Bishop has been with the Town since 1998 helping to guide the Police Department in a professional manner. He has earned genuine respect from the community and the Town.” Captain Bishop accepted the award and thanked Interim Chief Evangelous and his fellow officers for the award.

Interim Chief Evangelous said he also wanted to make the Board aware that Polaris was donating a beach patrol vehicle valued between \$28,000 and \$30,000 to the Town.

CONTINUED PUBLIC HEARING FOR CONSIDERATION OF TEXT AMENDMENTS TO ADD SECTION 155.7.28 MARINA RESTAURANT IN THE C-3 COMMERCIAL DISTRICT; TO AMEND SECTION 155.6.4 TABLE OF PERMITTED/CONDITIONAL USES; TO ADD A NEW DEFINITION FOR MARINA RESTAURANT IN SECTION A.3; TO AMEND THE EXISTING DEFINITION OF FLOATING HOME IN SECTION A.3; AND TO AMEND SECTION 155.9.1.5 OFF-STREET PARKING STANDARDS FOR MARINAS. ORDINANCE NOS. (2020) 1798-1801.

Planning and Parks Director Tony Wilson gave the following overview: “This is a text amendment for supplemental regulations for a floating restaurant. On May 20, 2020 our department received a text amendment application to amend Chapter 155. This would include a marina restaurant as a conditional use with supplemental regulations in a C-3 District. The petitioner is Wrightsville Yacht Club, Inc. and they have appointed Attorney Matt Nichols to serve as their authorized agent. The C-3 District is at the Marina Street area. It is also at Seapath, the old Scotchman Store, and The Landing. This text amendment will only apply to the Marina Street Area. If this goes through, it will be allowed as a conditional use in the C-3 District and it will add a new section for marina restaurant, allow marina restaurant as a conditional use in C-3, we’re going to add a new definition for marina restaurant in Section A-3, we will be amending the existing definition of a floating home in Section A-3 to exclude marina restaurant, and we will be amending Section 155.9.1.5 Off-street parking spaces. Currently there is no provision for a marina restaurant; it only addresses floating homes in 155.7.12. Part Two of the application has the definition of marina restaurant; however, Part Three of the Applicant’s Exhibit A adds a new subsection to the definition of floating homes to exclude marina restaurants. The Applicant’s text amendment changes the required parking for marinas and boatminiums from one parking space for each slip in the marina plus one parking space for each four dry places to one space for every two slips in the marina plus one for each four dry storage spaces. This text amendment went to the Planning Board three times. The outcome of the June 2, 2020 Planning Board meeting, the members voted six to one for a favorable recommendation for the text amendment with the following conditions: We’re going to edit Item E to read, ‘Not to exceed 28 feet from the top of the bulkhead.’ At one time, it was at 40 feet in height and it came to us and it went back a couple of times; so we did get that down to 28 feet. It has been opened and continued from the last two Board meetings.’

Town Attorney Brian Edes said, “Just for clarification: the text amendment public hearing is legislative in nature because it deals with the possibility of changing

our ordinances. I believe the order that we are going to do it is to open the public hearing and let anyone who wants to speak on the text amendment speak; close the public hearing and not take any action yet. Then open the public hearing for the conditional use permit, which is quasi-judicial and people have to be sworn in and cross examined; and if the Board is inclined to take action on the text amendment in a favorable way, you could then take action on the conditional use permit application. If you do not pass the text amendment, there would be no need to address the conditional use permit because that use is presently not accommodated in our Code.”

Mayor Mills asked, “Parking: one off-street parking space for each six seats in a marina restaurant – is that what we typically require?” Mr. Wilson replied, “I think we’re changing that to one for four.” When asked if he was comfortable with that, Mr. Wilson replied, “Yes. In the past, Tim and I have always talked about it was always one parking space for each two slips – that’s the way it is now. We said two or three years ago for other projects, we thought one for one would work and I think other communities do that. So, we don’t think that’s a big issue as far as parking goes.” Mayor Mills said, “The draft ordinance says ‘shall not exceed 40 feet above the waterline’ but you’re recommending approval of changing that to read ‘not to exceed 28 feet above the waterline’?” Mr. Wilson replied, “The Applicant is going to come up and they may want to tweak that somehow. At the Planning Board level, it came in at 40 feet and they left it at 40 feet. They may have some tweaks from the Planning Board that they may want to keep the 40 feet in there. But the conditional use permit, when it gets to that point, will say a max of 28, if that’s what you agree with because they may be tweaking that height at the Board of Aldermen level.”

Alderman Dull said, “The request by the Planning Board with a six-to-one vote was 28 feet from the top of the bulkhead.” Mr. Wilson replied, “Yes.” Alderman Partin said, “It says not to include the removable canopies, etc., so if it is 40, they could have canopies if they have open space at the top, right?” Mr. Wilson replied, “No, I think the 40 feet would be measured to the top of whatever that is. If it’s a canopy, in my opinion, that would be the height of it. I think that’s something that they’re going to tweak tonight.” Alderman Dull said, “So, the maximum number of seats possible was, for each parking space they get six; for each boat slip they get two and that’s how they’re going to add up their total?” Mr. Wilson replied, “Right. And they provided the parking numbers there that will work with the existing Wrightsville Yacht Club.”

(There was a brief delay because some of the people that were in other areas of Town Hall due to the social distancing requirement had lost their audio and they were coming to Council Chambers so they would not miss what was said. Mr. Edes asked that the minutes reflect that Mr. Owens had canvassed the area and everyone who was there for this hearing was in the room.

Alderman Partin said, “The parking that you quoted was related to slips and something else?” Mr. Wilson replied, “Dry slips; they’re not going to have dry slips but we’re tweaking that while we’re doing this also.” Alderman Partin said, “It is my understanding that part of the restaurant would be public.” Mr. Wilson said, “Those numbers are included in the number; it doesn’t matter if it is private or public, those numbers are still there and it will show that they have that parking.”

Attorney Matt Nichols, representing the Applicants, said, “With me tonight are Sam Clary, General Manager of Wrightsville Yacht Club; my clients’ architects Michael

Kersting and Toby Keaton with Kersting Architecture; Howard Resnik, our civil engineer with CSB Engineering; E. B. Pannkuk with Stature Engineering is our structural engineer; and Bryan Thomas, with Monteith Construction. We do have a presentation and generally there are two items before the Board. The first item for the Board's consideration is the proposed text amendment to allow the marina restaurant use in very limited instances in the C-3 Zoning District pursuant to a conditional use permit. Second, we have a request for a conditional use permit for a specific proposed marina restaurant project for the Wrightsville Yacht Club. I'm going to ask Michael Kersting to come up and provide some context and background for both of the requests. But, as the Board is very familiar with the area, the Wrightsville Yacht Club is shown here. Generally the marina area is shown in yellow. What we are talking about is a proposed marina restaurant in an existing boat slip, and that's the slip shown in blue on the slide that's on the screen now."

Mr. Edes said, "If you want any of this evidence to be considered in the conditional use permit hearing, you'll have to offer it again." Mr. Nichols said, "Yes."

Mr. Michael Kersting, Kersting Architecture, said, "I was brought here to tell you about the design of what we are proposing. It is important to recognize that it is not a building and it is not a boat; it's a marina restaurant. It is a structure built on top of a barge that will house on its first floor a restaurant; on its second floor a club lounge; and we are going to need to ask you for a little bit of space just above that as well. I want to give you a quick glimpse of what it would look like. You know where the location is – the blue roof you see there. The white line in the back is representative of approximately where the bridge would be located. This drawing is to show that it's a very simple glass and steel type structure sitting on top of a barge. Lots of windows to allow the views out into the marina. Again, the first floor would be the restaurant component; the second floor would be the lounge component; and in this case, there's the roof on top. That structure there represents a structure that is about 28 feet from the top of the waterline to the roof. Some of the boats like the Rhino would tower above this structure. Another view of what the marina restaurant would look like in the context of the other buildings and other docks. The floor plan of the structure; it is 29 feet wide by 118 feet long. It's going to be a nice place to have a meal. Parking will be in the existing parking lot. We will have valet parking for the membership. Here you can see the context of the marina restaurant – the Blue Water – the Club to the left of the Blue Water; and if you'll look at the diagram on the lower right you can see the L-shaped parking in the context of all those structures. That's a quick overview."

Mr. Nichols said, "Michael had mentioned an option; what we'd like to propose for the Board's consideration is a third level; you can call it a bridge level. When we get into the project in more detail, we can talk about the size of that. If it pleases the Board, we are prepared to go through the specifics of the text amendment whenever you'd like us to do that." Mr. Edes said, "I'd like to remind the Board that this would be the text of the ordinance itself. If its use is allowed, then the next applicant may have a similar or a completely different setup business model."

Mr. Nichols said, "The proposed text amendment essentially consists of five parts: we have a definition of a marina restaurant which would be a new use in the Town; we are proposing to amend the definition of floating home just to make clear out of an abundance of caution that a marina restaurant is not a floating home, which does have a specific definition; that's more of a vessel that would move throughout –

could be moved. What we're proposing is a permanently moored vessel. It is not a dinner cruise or anything like that. It stays in the existing boat slip and will be there permanently. The third part and perhaps most important part would be to establish specific requirements for a marina restaurant project. The fourth would be to add marina restaurant to the Table of Uses which would be required. And then, we are proposing an amendment to the off-street parking standards for marinas generally. And that's been in consultation and discussions with staff as we've gone through this process. The first part would be the definition of marina restaurant. The things I would emphasize here is that it is designed as a permanent restaurant constructed upon a barge and primarily immobile; that is out of the navigation. It functions substantially as a land structure within its anchors moored and it's docked within a marina in the C-3 District. The thing I would also emphasize in this definition is that it's only allowed by conditional use permit granted by this Board, pursuant to the public hearing process. We are proposing to remove or just make sure everything is clear that a marina restaurant does not fall into the definition of a floating home. So, we are proposing to add that to the definition of floating home. We would propose adding to the Table of Uses a marina restaurant as a use by conditional use permit with prescribed conditions only in the C-3 District. And I think what's the most important part of all of this is, even though the definition of marina restaurant is pretty narrow, we wanted to make sure in the actual criteria for the marina restaurant that we were very narrow and limited in scope for this proposed use. I will touch on a few highlights here – I know this is in the Board's packet. It is only allowed in C-3 and it's only allowed in conjunction with a conditional use permit. Item B – is probably the most important part of the criteria, the marina restaurant has to be located and permanently moored in a marina and that marina has to be adjacent to the Intracoastal Waterway. That marina has to contain at least 75 wet boat slips and that marina must be in existence as of the date this Board adopts the ordinance. Although any text amendment applies to the entire Town, I don't know what else could qualify as an existing marina. There is at least one other bigger marina in Town but it is not on the Intracoastal Waterway. If someone else were to try to do this or a similar use, they would have to go through the same process. So, we crafted the text amendment so this is the only place this could be considered. We added dimensions in C that would not exceed 31 feet in width and 120 feet in length. The marina restaurant that we're proposing is slightly under that at 29 feet wide and 118 feet long. We wanted to have a little bit of space in there. Some of the technical things were taken out of other parts of the Code. It would not extend beyond the Town's pier head line. The 40 feet – there was a lot of discussion about height at the Planning Board meeting. We were proposing 40 feet above the waterline because as Michael mentioned, the waterline is going to be a few feet below where you would measure a building height. Given the tide, it could be two feet below or it could be four feet below; I don't know the exact number but a 40-foot marina restaurant would not measure the same as a 40-foot structure on land. What we were proposing for the Board's consideration was the 40 feet above the waterline to allow the Board to consider this limited third level that we'd like to present to you at the conditional use permit part. I think what I would emphasize is, even if you allow the 40 feet, it doesn't mean you have to approve the third level. You may think it's not in harmony with the area; you may think it doesn't meet the Land Use Plan; or it doesn't fit in. So it still would be in your discretion as to whether you would allow that third floor as part of the conditional use permit review process. Some of the technical things we took out of other parts of the Code as far as the walkways and connections to utilities. As far as the parking under G, our problem was that many of the folks at the

restaurant would be there in connection with the Yacht Club anyway and they would be parking there. The idea is some would probably go out in their boat; they would come in at evening maybe get dinner. So, there's a lot of shared use there. That's where, instead of the one parking space for four seats which you see in a standard restaurant, this is such a unique use, we were asking the Board to consider one parking space for each six seats in the marina because a lot of those folks are going to be there using their boat anyway. Some people arrive to the marina by boat and they don't use a car at all. So, Sam (Clary) thinks that that's more than enough parking and when we show you our parking schedule, we feel like there's plenty of parking out there for the proposed use. It would have to meet Town requirements. We have a provision in there for a dry pipe for the firefighting. We've been in discussions with the Town about the safety component. Then, the last part, just to make abundantly clear that you're only allowed to have one of these. So, there's not going to be another request for another one of these or a smaller one of these. Any qualifying marina could only have one of these under any circumstances. To conclude the text amendment part, this would address the parking, again we're asking the Board to please consider for marinas and boatminiums generally what is now one parking space for each slip would be one parking space for each two slips. We're not proposing any change as far as the dry stack storage of boats. It is still one space for each four dry stack storage space. Sam could speak to the fact that one space for each slip is really over parking the facility because there's an abundance of parking there at any given time. It's rare that a big number of the spaces are being used at one time. In conclusion on the text amendment part, I would just emphasize that it is very limited in scope; C-3 District only; it has to be a qualifying marina; 75 wet slips; the marina has to be in existence today or whenever this is passed; it has to be adjacent to the Intracoastal Waterway; it is a permanently moored vessel; there would be only one per qualified marina; and above all, this Board has to grant permission to anybody who is seeking this. That concludes our text amendment presentation."

Following a brief discussion regarding the reasoning behind the limiting language in the proposed text amendments, Mayor Mills opened the public hearing at 6:29 p.m.

Mr. Lowell Zimmer, Zimmer Development Company and developer of 2 Marina Street, said, "From a neighbor as well as a member of Wrightsville Beach Yacht Club, I strongly support this project. Secondly, from a developer – an outside opinion, I think what they're proposing here is going to have a positive impact on the Town and its neighbors economically and every other way. Basically what I see them doing is they're turning a Class A Marina into more of a yacht club. Something you'd see in Miami or higher income areas and I think it's going to drive a higher niche clientele here."

With no further public input, Mayor Mills closed the public hearing for the text amendment at 6:31 p.m. Mr. Edes said, "At this point, I believe we want to hold off on taking action on that and move on to the conditional use permit application."

CONTINUED PUBLIC HEARING FOR CONSIDERATION OF A CONDITIONAL USE PERMIT APPLICATION FOR A PRIVATE FLOATING RESTAURANT WITHIN WRIGHTSVILLE YACHT CLUB, INC.'S EXISTING MARINA TO SERVE AS AN AMENITY FOR MEMBERS OF WRIGHTSVILLE YACHT CLUB AND THEIR GUESTS.

Mr. Edes said, “There are two different conditional use permit applications tonight and what I’m about to say applies to both of them. We’re about to open an evidentiary hearing on this conditional use permit application. It’s known in the law as a quasi-judicial hearing. It’s like a court hearing but not quite as strict. The Applicant has the burden of proof and they must offer competent, substantial and relevant evidence that the use they seek to engage in meets the criteria in our ordinance for a conditional use permit. You can find those on pages 49-50 in the Board packet; that’s the nine criteria that the Applicant has to prove this use will meet. If the Applicant offers substantial, competent and relevant evidence that their application meets that criteria, then the burden would shift to anybody who is in opposition to prove to you with their own evidence that the Applicant has not met the burden on those nine criteria. We will conduct this hearing in a manner to provide both substantive and procedural due process to the Applicant and all other parties wishing to speak. To that end, we’re going to have all witnesses sworn in. Each witness will be subject to cross examination and then subject to questions from the Board. Lastly, the Applicants are entitled to an impartial, open-minded Board which means you don’t already have a fixed opinion. So, I need to ask a few questions and these questions will be to everybody about any preconceived notions you may or may not have prior to this hearing. Again, you have to base your decision tonight only on the competent, relevant and substantial evidence produced during the hearing. So, do any of you have a financial interest in the subject matter of this application?” All Board members replied, “No.” Mr. Edes asked, “Does anyone on the Board have a close or a family-like familial relationship with the Applicant?” All Board members replied, “No.” Mr. Edes asked, “Or any of the principals of the Applicant?” All Board members replied, “No.” Mr. Edes asked, “Has anyone had any conversations with either the Staff, the Applicant, or someone in opposition concerning this application after the application was submitted?” All Board members replied, “No.” Mr. Edes asked, “Has anyone made a site visit to the site after the application was submitted for the purpose of considering the application?” All Board members replied, “No.” Mr. Edes asked, “Can any of you think of any reason regardless of what the reason is, why you cannot have an open mind and base your opinion solely on the evidence you hear tonight?” All Board members replied, “No.” Mr. Edes said, “The way our ordinance reads, the way we will proceed tonight is, first we’ll have Staff introduce the item. I recommend that the Staff member that introduces the item first be subject to cross examination; once that cross examination is over, then subject to questions from the Board. Then we move on to the Applicant. Same process, any cross examination and then questions from the Board. Then we’ll move on to anybody else who signed up and has been sworn in and has standing and would like to speak.” Mr. Edes said anyone wishing to provide testimony could stand in place and affirm that they would tell the truth, the whole truth and nothing but the truth.

Mayor Mills administered the Affirmation to those wishing to provide testimony. He then opened the public hearing at 6:35 p.m.

Mr. Wilson gave the following overview: “We received a conditional use permit application on May 20, 2020 for the Marina Street Floating Restaurant, located in the C-3 Zoning District, within the Wrightsville Yacht Club. The existing marina will serve for the members of the Wrightsville Yacht Club and their guests pursuant to Section 155.7.28 Marina Restaurants. The text amendment is pending. Construction of the marina restaurant will occur off site. It will be floated in and permanently secured and

moored at the marina to the concrete docks and pilings. The restaurant will be constructed to comply with all requirements including wind ratings. Additionally, the restaurant will be fully sprinkled with adequate water supply available for fire safety. Water and sewer and utilities will be designed to be disconnected from the vessel when necessary. The restaurant will be subject to all North Carolina and New Hanover County Health Code Regulations. The second floor will be for the Wrightsville Yacht Club members only and their guests. The first floor will be fully open to the public. There's going to be no new vehicular ingress or egress as proposed as the restaurant will be for the Wrightsville Yacht Club members and for the public – they will be going through the Wrightsville Yacht Club's existing facility. The floating restaurant will be approximately 118 feet long by 29 feet wide. The site plan indicates 144 seats: 66 seats in the restaurant and 78 seats in the lounge. The height is indicated to be below 30 feet. The restaurant expects to have ten employees on staff. The parking requirement for the restaurant is calculated at one per six seats; twenty-four will be required for one space for each two employees so staff will have five required spaces; and one parking space for two wet slips. So the total number of parking spaces for the restaurant will be seventy-nine spaces. The marina currently has eighty- nine parking spaces, so the parking numbers work out if the text amendment is passed. Currently, there's no provision for a marina restaurant. The ordinance only addresses floating homes as per 155.7.12. The Fire Department's comments would be concern about fire. The Chief's comments talk about the spread of fire. The building will be sprinkled and it will have a standpipe out there, too. The Public Works Director draws attention to the annual inspection of the grease trap that will have to be done. Trash services will have to be provided for the restaurant. The water and sewer lines should remain connected but with a quick disconnect in case there is a storm. This has gone to the Planning Board at least three times. In the beginning, it was a larger structure with more people. In the very beginning, it was just for the private club. The Planning Board had some issues so they came back three times and made some changes to that to open it up to the public on the first floor and reduce the size of it. So with those changes, Staff does support the conditional use permit. Some of our concerns were about how this was going to be anchored. The Planning Board thought about it being near the bridge. So, they hired an engineer to come up with it and they will demonstrate that tonight. So, some of our concerns were about storm surge and how it would affect the bridge. The Police didn't have any comments. At the June 2, 2020 Planning Board meeting, the members voted six to one in favor of recommending the conditional use permit with the following conditions: 1) the plan will be reviewed and approved by the NCDOT bridge engineers; 2) the second level will be an amenity for members of the Wrightsville Yacht Club and their guests and will not be open to the public; 3) the first floor of the proposed floating restaurant will be open to the public; 4) the site will include a 12-capacity bicycle rack; 5) no recycling will occur between 8pm and 8am; 6) the applicant must obtain all necessary state and local permits; 7) the applicant must comply with all Town ordinances; 8) no customers may be seated in any outside dining area after 10pm; 9) no customers may be served in any manner whatsoever in the facility after 12:00 midnight; 10) no outside music; and 11) in the event the applicant violates any of the terms and conditions as set forth herein, this permit shall be subject to revocation. If two citations for violations of the Town's noise ordinance are issued because of activities at the premises to which this conditional use permit applies within a twelve-month period, this conditional use permit shall be subject to review and possible revocation. I thought the Planning Board did a good job of getting the restaurant narrowed down some."

Alderman Dull asked if the Applicant was in agreement with the Planning Board's eleven points, Mr. Wilson replied, "Yes, as far as I know. But like I said, they want to tweak the height thing."

Mr. Edes said, "Mr. Wilson, my agenda packet has pages 41 through 72 with materials in the agenda related to this application. Can you verify that for us?" Mr. Wilson replied, "That's correct, yes." Mr. Edes said, "Would you like to offer that into evidence as Exhibit 1?" Mr. Wilson replied, "Yes." Mr. Edes said, "Mr. Nichols, any objections to that?" Mr. Nichols replied, "No, sir." Mr. Edes said, "Does anyone who affirmed object to the portion of the agenda packet dealing with this application coming into evidence?" There were no objections from anyone that had affirmed. Mr. Edes said, "Any cross examination from Mr. Nichols?" Mr. Nichols replied, "No, sir." Mr. Edes said, "Anyone who affirmed want to ask Mr. Wilson any questions? Madam Clerk, let the record reflect that no one wishes to cross examine Mr. Wilson. Now would be the time for any additional questions from the Board."

Mayor Mills asked Mr. Wilson to explain the concern about fire for the benefit of those who may not know. Mr. Wilson said, "I think the concerns were that the vessels are fiberglass. This one will not have fuel on it, I don't think. When they get up here, they will talk about the separation of the fixed docks that will give some separation. That will help. Then it's going to be a fully sprinkled building just like any restaurant. So, that's definitely going to help. With regard to life safety, nobody will be sleeping there, so the people that are there can get out in case of fire. That's another benefit. So, fire was a concern but I think the width of the concrete docks will help. This structure will be glass and other materials. With the sprinkler system and the standpipe, we think it will be a pretty good structure. The standpipe allows the Fire Department to hookup and provide fire safety for the vessels."

Alderman Partin referenced the easy disconnect and asked if they would have to move this boat if we were to have a hurricane. Mr. Wilson replied, "This vessel will stay; it will not leave. It will be designed to withstand 150 mile per hour winds. They will talk about a storm surge of over twenty feet. The engineer will go over how the pilings will hold that. Staff feels good now with the engineering for that structure to stay there during a storm."

Mr. Nichols said, "For the record, I'm Matt Nichols and I'm here representing the Applicant for the conditional use permit application. Also for the record, with me tonight is Sam Clary with Wrightsville Yacht Club, Michael Kersting and Toby Keaton with Kersting Architecture; we have our civil engineer and our structural engineer here to answer any questions the Board may have, that's Howard Resnik and E. B. Pannkuk; and Brian Thomas with Monteith Construction is also here. We have another presentation and we'll get into more of the detail of what we're proposing. I'm going to turn it back over to Michael Kersting."

Mr. Kersting said, "The whole nautical element of the marina is for the building to blend in and also to have a little bit of style and make it an attraction for people to come to. It's mostly a glass structure. The idea is for people to enjoy sitting near the water and enjoying boats and enjoying a fine meal and possibly a cocktail. The picture you see there represents a structure that was approved by the Planning Board. This would be the 28-foot structure mentioned previously. Again, that's 28 feet from the waterline. We would like to request that we can modify our structure to include this

glass pavilion on the top. It would serve as a meeting space and an office space for the Club. It takes up less than a third of that rooftop. There's a little box behind it that would house some mechanical equipment like air conditioners and such. But it's a fairly transparent piece and we don't feel like it should be objectionable to any of the neighbors. It was a two-level design. It doesn't come anywhere near as tall as the adjacent boat and the adjacent structure. In fact, there could be times when you barely even notice this thing. These are floor plans showing the relationship to the dock. The lower plan is the restaurant level which would include a dining room, bathrooms, a nice beautiful set of stairs to get up to the Club lounge level. The kitchen is located for easy delivery with food services and will serve the restaurant preserving the dining room for the better views. The upstairs is the Club level. There will be a series of tables and chairs – mostly chairs for seating up there – and extra bathrooms. With the third floor plan, we would carry a separate set of stairs up to that meeting room/office space up there." When asked if there would be an elevator, Mr. Kersting replied, "There is an elevator, yes. So, these are images that we created to give it some sort of sense of a nautical theme loosely based on some of the architecture you might see in a fine yacht. There will be valet parking for those who drive to the Club."

Mayor Mills asked what the proposed dimensions were for that third level. Mr. Kersting replied, "Those dimensions are 34 feet long by 19 feet wide and the height is another 11½ feet bringing the total structure to approximately 39 feet from the waterline." When asked about the total length of the barge, Mr. Kersting replied, "One hundred eighteen feet." When asked if they were planning to put a railing up, Mr. Kersting replied, "We would like to propose a little rail there and that should stay within that 34 feet. We would not let people go near the water. There is a little walk out area on the Club level." Alderman Dull noted that this was beyond what the Planning Board approved. Mr. Kersting said, "In talking with Sam and the Club, they feel like they would like to have this meeting space out there." Alderman Dull asked how that worked out with parking ratios. Mr. Kersting replied, "It still works within the context of our sizes. It doesn't change that at all." Alderman Dull asked if they had to have an elevator on the third floor. Mr. Kersting replied, "We will provide one elevator that shoots straight up."

Mayor Pro Tem Miller said, "Did the Planning Board not approve this or you didn't ask them?" Mr. Kersting replied, "The Planning Board did not approve this; they approved just the two-story version." Alderman Dull asked if this version had been presented to the Planning Board. Mr. Kersting replied, "A similar version was presented in an early meeting to the Planning Board. It was much larger; you could pretty much stand all the way to the water. At the last Planning Board meeting, we decided to go with the two-story option. But since then, we really feel like we would like to go with this smaller version of the meeting room."

Alderman Dull referenced ADA and fire egress and said, "Have you got all that figured out? Mr. Kersting replied, "We designed it to ADA standards as much as you can." Alderman Dull asked, "Is there a special standard when it comes to ADA on slopes?" Mr. Kersting replied, "Because it's not technically a building, one could argue that ADA standards don't even apply." Alderman Partin asked if it would actually move. She said, "Will you feel it floating at all?" Mr. Kersting replied, "No." Alderman Dull said, "So this is not a building?" Mr. Kersting replied, "It's not a building."

Mayor Mills said, “I understand that when you proposed it to the Planning Board, you had that upper level extended all the way to the water.” Mr. Kersting said, “Correct. In the original presentation, yes.” Mayor Mills said, “And they did not approve a third level. Did they state why they did not approve it?” Mr. Kersting replied, “As I recall, I remember someone having the concern about noise and maybe about height; they were concerned about the extra height. They were under the impression that it was going to be massive.” Mayor Mills said, “What was the height of the first two levels when you took the version to the Planning Board that included the enlarged third level?” Mr. Kersting replied, “Each level is twelve feet and that’s never changed from the beginning.” Alderman Dull said, “So, from the water line to the top of the third level now, it is thirty-eight feet, is that what you said?” Mr. Kersting replied, “Thirty-nine feet.”

Mayor Mills asked if the Board had any more questions for Mr. Kersting. There were no further questions from the Board. Mayor Mills asked if there was any cross examination from anyone. He said, “Let the record reflect ‘No’.”

Mr. Nichols said, “Mr. Mayor, I was going to have E. B. Pannkuk come up. He is the structural engineer to talk a little bit about how this is going to be secured.

Mr. Pannkuk said, “My name is E. B. Pannkuk. I’m a structural engineer. I specialize in marine structures. I helped rewrite the North Carolina Building Code for Chapter 36: Dock, Piers, Bulkheads and Waterway Structures. That was years ago. Currently, I’m on an ad hoc committee to revise the North Carolina Building Code for the structural sections. Quite a bit of what I do is marinas and waterway structures. I did Crystal Pier. On the ADA Code, there is a supplement to the ADA Code for marinas and waterway structures. I’ve already been talking to my client and planning to meet those requirements. And that’s for low tide – low tide is what we’re shooting for; not high tide. As far as supporting this structure, one thing that I mentioned to the Planning Board is while you don’t see buildings on barges very often, it’s not terribly uncommon. I happen to have two buildings being placed on barges and floating docks right now that I’m working on.” Mr. Pannkuk referenced a casino that he helped build on a barge in Mississippi and said Hurricane Katrina did not do much damage to that. He said, “The one we’re looking at here is placing large, probably 20-inch diameter steel piles. We’re thinking that we will probably put a frame that connects all the piles. We also talked about the possibility of putting a second frame on there so we can use that frame to lift the entire barge up out of the water to do maintenance on it. That system would pay for itself after one use. Again, that would make it environmentally friendly. You don’t want somebody scraping the bottom of this barge under water. Again, keep it in this location. We’ve also discussed the possibility of having telescoping piles so they don’t stick twenty or thirty feet up in the air all the time. I know we’ve mentioned the 150 miles per hour wind code; that’s going to pale in comparison to the wave loads that we’re designing for. This is something our team is very confident in addressing and making sure it is safe and that it stays in place.”

Mayor Mills asked for any cross examination from anybody. Mr. Edes asked the record to reflect that there was no cross examination of Mr. Pannkuk.

Alderman Partin asked if the windows would also withstand 150 mile per hour winds. Mr. Pannkuk replied, “Yes, ma’am. They’ll have to.”

Mayor Mills asked where this would be constructed. Mr. Pannkuk replied, “I’m not sure if they’re constructing it on site or if they’re bringing it in from off site.” Mayor Mills said, “I had understood that it would be off site.” Mr. Pannkuk said, “It will be built in downtown Wilmington.” Mayor Mills said, “You referred to telescoping pilings – that’s being considered; that’s not a determination at this point – is that right?” Mr. Pannkuk replied, “That’s the concept we’ve been talking with the client about. None of these designs are complete but as far as I am concerned, that’s what we’re moving forward with.”

Alderman Dull said, “Are you actually doing all the structural design, not just for the pilings?” Mr. Pannkuk replied, “Right now I’m just doing the pilings design.” Alderman Dull said, “You’re designing to keep the barge in place but not the barge itself?” Mr. Pannkuk replied, “No, the barge will be designed by a naval architect.” Alderman Dull asked who regulates this. He said, “When you’re putting your design forward, is it Tony’s job to inspect your design? What’s the checks and balance on your design?” Mr. Pannkuk replied, “On occasion, they’ll hire a second party engineer to do a peer review. Sometimes on a difficult project, I’ll hire another engineer to do a peer review. That’s a concern of mine as well – that it will work and that it will last. It is a specialty. Not all structural engineers know how to do marine design.” Alderman Dull said, “That might not be a bad condition that we hire a peer to do a peer review of the design.” Mr. Pannkuk said, “I can also provide a set of calculations and computer models for Tony as well.” Mr. Edes noted that Alderman Dull’s proposed condition would be an appropriate condition that they could discuss when it came time.

Mr. Nichols said, “As far as the specific site design, Howard Resnik is here. He prepared the actual site plan that was presented here. On page two, where it delineates the parking, just to walk through the parking a little bit. There is a recorded plat in the New Hanover County Registry in Book 35 at page 336 that shows the parking for the Wrightsville Yacht Club. What’s identified in yellow is 92 spaces and a dumpster area. It’s hard to tell at this scale. With that in mind, in the staff report, there are a couple of charts breaking down the parking. On the right hand side of the screen is what we’re talking about with the proposed project. I’ll go through the column on the right hand side. The Wrightsville Yacht Club has 89 wet slips. With the proposed text amendment, it would be one parking space for each two slips which equals 45 parking slips for the boating. On the marina restaurant, we were proposing 144 seats, that’s for the two-level design. If it was a two-level design with 144 seats, that would require 24 spaces. Then, 10 employees would require 5 parking spaces for a total of 74 spaces. As I mentioned, on the map there were 92 spaces shown. I did want to point out, and it’s not reflected in this chart, that when this Board approved the project at 2 Marina, 8 of those 92 spaces were dedicated to that project. So, the available parking in that lot is really 84 spaces. We still have a little cushion in there. If you added a third level, which would add 12 seats, it would just be 2 additional parking spaces needed. Even if you added an employee related to that, we’re still within the parking. I’d like to ask Michael (Kersting) to come back up to answer any questions and to walk through some of the third level design.”

Mr. Kersting said, “These are additional views of the third-level concept trying to show that the impact is relatively light as far as visual impact in the marina. The 34 feet actually includes out to where that person is standing. This is a view from the bridge. This gives a rough idea of what the floor plan would be with the mechanical corral behind that. To answer your question about engineering and construction, we

are working with a consultant naval architect down in Florida to help us with this type of structural engineering associated with this type of marina architecture.” Alderman Dull said, “So, this actually does not follow North Carolina Building Code per se?” Mr. Kersting replied, “No. I’ve had many conversations with Tony about that.” Mayor Mills asked if there was any cross examination of Mr. Kersting and no one responded. Alderman Dull said, “All of your mechanical systems, would those be inspected by the County?” Mr. Kersting replied, “The restaurant will be regulated by the Health Department and they will do an inspection.” Alderman Dull said, “So, like your mechanical and electrical systems, would you have to bring in New Hanover County to inspect them?” Mr. Kersting replied, “No. It’s not a building. There is something similar in downtown Wilmington parked on the river. It’s a slightly smaller version of this. We actually consulted with the owner and asked who regulated this. Quite frankly, the Department of Insurance said they do not regulate that.” Alderman Dull referenced the dimensions of the third floor and said, “It’s 118 feet; you’re really coming halfway and not a third, it looks like.” Mr. Kersting said, “Roughly, we’re on a 12-foot module with each of those railings in there.”

Mr. Nichols said, “I did want to cover the construction timeframe. It was mentioned before that most of the construction will be offsite so it’s not traffic construction for the Town; it’s not noise for the Town. I really think it would be minimal disruption to the Town. There would be some site work to get ready for the vessel to be delivered but for the most part, it would be sort of turnkey brought in. It’s an approximate two-year construction timeframe – with design and engineering up to six months; construction of a custom barge six to seven months; and then the restaurant up-fitting on the barge six to seven months. If approved, in the Board’s discretion, the estimated mooring date would be roughly two years from now. I did want to note that I talked to the Town about this as far as, there is a provision in your Code that says if you have a conditional use permit, you have to start construction in six months. That is the goal but it’s not something that we would see happening. We are glad to put a condition in there that we would have it under contract and under design and, hopefully, we’d get started on the construction within that six months, but it won’t be something that you could drive by every day and see the progress of it. But we would be glad to provide updates to the Town and put benchmarks so the Town could see what we’re working toward. We would be happy to do that. To the extent that we’re allowed some kind of extension or clarification on that we would ask for that please. In summary, we would respectfully contend that we meet the criteria in the newly established ordinance if passed. We think this would be an enhancement to the C-3 District marina area. We didn’t get too much into the consistency of the CAMA Plan but that is in our application and that was discussed at the Planning Board hearing. We appreciate your consideration. I think that concludes our presentation. There was one item, I know that Mr. Zimmer spoke before as to the surrounding property owners. Just for purposes of the record in this preceding, if I may have him come up and just speak not only as a neighbor but someone who is experienced in real estate and impacts on real estate values and things.”

Mr. Lowell Zimmer, Zimmer Development, said, “You are welcome to use my previous statement. From the developer aspect, I see this having nothing but a positive impact on the surrounding properties and the Town itself. I think it’s what Wrightsville Beach is missing right now to get that higher-end clientele. And as a neighbor, I strongly support it.” Mayor Mills asked for any cross examination.

Mr. Edes said, “Mr. Zimmer, in your experience as a developer, do you have an opinion as to what, if approved, this use will have on the property values of the adjacent properties?” Mr. Zimmer replied, “I think it will positively impact them.” There was no more cross examination of Mr. Zimmer and no questions from the Board.

Mr. Nichols said, “That concludes our presentation. We appreciate the Board’s consideration and we’re glad to answer any questions the Board may have.” Mr. Edes said, “Mr. Nichols, would you like to move a copy of that power point into evidence as Exhibit 2?” Mr. Nichols replied, “Yes, sir. We would like to do that, thank you.” Mr. Edes asked if there were any objections from anyone who had been affirmed to having the power point coming into evidence. The record was instructed to reflect that there had been no objections from anyone.

Mr. Edes said, “Mr. Nichols, do you have any knowledge as to how much of this barge/restaurant will be build offsite versus – I heard you mention there would be some site prep to bring it in – like the construction of the restaurant or with the construction on top of the barge, is that to occur offsite?” Mr. Nichols replied, “That is my understanding but I want to make sure I’m saying the right thing.” Mr. Edes said, “I think the Board might want to hear some evidence as to how much will be offsite versus here.” Mr. Clary replied, “I’m Sam Clary, General Manager of the Wrightsville Yacht Club and the Wrightsville Beach Marina. We will do practically everything offsite. The last thing we want is construction in such a high-density area where there is so much recreational activity. Safety factors – everything that you could think of, we want in a commercial setting and in an industrial yard downtown. All the systems will be built to the North Carolina Building Code. All systems will be engineered. We will not skimp anywhere on this. And we do plan to have annual inspections by BFEE on all the mechanical systems on the barge and are glad to supply the Town with passing reviews each year.” Mayor Mills asked for any cross examination by anyone that had been affirmed. The record was instructed to reflect that there had been no response. Mr. Edes asked if anyone else wanted to provide testimony who had affirmed tonight. He asked the record to reflect that no one else wished to speak. With no further questions from the Board, Mayor Mills closed the public hearing at 7:22 p.m.

Mr. Edes then gave a summary of the evidence as follows: “Those who testified were all affirmed to tell the truth. We heard first from Mr. Wilson on behalf of staff. There was no cross although cross examination was offered and Mr. Wilson was questioned by the Board. The Board received into evidence Exhibit 1 which constituted pages 41-72 of tonight’s agenda packet. We then heard from Attorney Matt Nichols. He introduced himself as well as his team. We then heard from Mr. Michael Kersting, the architect of this project. Cross examination was offered; no cross occurred. He was questioned by the Board. Then we heard from Mr. E. B. Pannkuk, structural engineer. He talked about his qualifications. He was subject to questioning from the Board. Cross examination was offered; no one cross examined him. We then heard again from Mr. Nichols who carried us through part of the power point. We then again heard from Mr. Kersting. He was asked questions and answered questions from the Board. We then heard from Mr. Lowell Zimmer, an experienced developer. He testified that in his opinion, the adjacent property values would likely increase if this conditional use permit is granted. We then heard from Mr. Sam Clary. He indicated that “virtually everything is going to be built offsite.” He also indicated that he would be willing to have annual inspections. He would provide those to the Board

and that all of the systems will be built to the North Carolina Building Code. We received into evidence as Exhibit 2 the power point that was presented to the Board tonight. That's what I have in my notes as a summary of the evidence. Mr. Nichols, do you have anything that you would like to say with respect to that?" Mr. Nichols replied, "No, sir. Thank you." Mr. Edes said, "That concludes the evidentiary hearing. The Board does have the opportunity to open back up if it would like but, if you do, you go through the whole process again about cross examination and questions. If you will turn to pages 49-50 of the agenda package, you will see the nine criteria applicable to conditional use permits in the Town of Wrightsville Beach. The question now is whether the Applicant has produced sufficient, competent and relevant evidence to meet that criteria. If so, I didn't hear anybody testify in opposition, the only other question would be – does the Board want to append any conditions on an approval relevant to those nine criteria? I believe Mr. Wilson did say the Planning Board did have a few conditions they wanted to see. And to move this along to the items of interest, I heard the Board ask questions about ADA compliance. There were questions concerning a lack of building inspection requirements. There were questions concerning whether the Planning Board was presented with what we saw here tonight with respect to the third floor. There were questions and testimony regarding telescoping pilings. There were questions about what wind code this would be built to. There were questions about having some sort of back check on the structural design of the pilings and the barge itself. There were questions about the mechanical systems and whether there will be a back check on those. There were questions about to what extent this was going to be built offsite. And, there were questions about some sort of progress report keeping us updated. Mr. Nichols brought up a potential condition concerning the fact that it's going to be built offsite; he did not want his client to lose the permit because the Town of Wrightsville Beach may not be able to see when construction actually starts. He offered to provide evidence as to when construction starts. If you have any concerns related to those items, provided that they are reasonable and appropriate, we can append certain conditions to the approval if you elect to approve it. First, you have to determine whether they've met the criteria." Mayor Mills suggested reviewing the criteria one by one.

Alderman Dull noted that the Board had not voted on the text amendment yet. Mr. Edes said that would be the next order of business. Mayor Mills asked for any further discussion on the proposed text amendment. Hearing no questions, Mayor Mills made the motion to adopt the proposed text amendments (Ordinances (2020) 1798–1801). The motion was seconded by Mayor Pro Tem Miller. Alderman Dull asked if that included the Planning Board's recommendation regarding the condition not to exceed 28 feet from the top of the bulkhead. Mr. Edes said, "That's what Tony presented as being the text amendment, not as written but as modified. The staff presentation was to modify Page 32 by editing Item E to read, 'not to exceed 28 feet from the top of the bulkhead.' That's what you'd be voting on." Mayor Mills said his motion was to that effect. Alderman Partin said, "If we approve this text amendment at 28 feet, then there's no way they can get a third level." Mr. Wilson said, "The ordinance still has 40 feet in it and that's what was presented to the Planning Board. Their recommendation is to change that Item E to read, 'not to exceed 28 feet from the top of the bulkhead'. That's what their recommendation was." Mayor Mills said, "And that would prevent or close the possibility of a third level; is that correct?" Mr. Wilson said, "That's correct."

Mr. Edes said, “I think we ought to give Mr. Nichols the opportunity to speak again since staff spoke again on the text amendment.” Mr. Nichols said, “The only thing I would clarify is that we would respectfully ask for the 40 feet to allow the Board to consider the third level on the conditional use permit.”

Mayor Mills said, “I’m going to withdraw my motion and give everybody a chance to speak.” Alderman Partin said, “I think we should do the motion and modify it to 40 feet so that we can entertain the opportunity to discuss the additional level.” Mayor Mills said, “So it would read, ‘shall not exceed 40 feet above the water line’ – just so we’re clear?” Alderman Partin replied, “Yes.” She said she was making a motion to that effect. Mayor Mills called for a second to that motion. Hearing no second, he said the motion failed for lack of a second. Mayor Pro Tem Miller then made a motion to approve the text amendments as just presented by Mr. Wilson with the Planning Board’s recommendation of 28 feet from the top of the bulkhead. The motion was seconded by Alderman Dull. The vote was taken and recorded as ayes by Mayor Mills, Mayor Pro Tem Miller, Alderman DeGroot and Alderman Dull and nay by Alderman Partin. Mayor Mills made a motion to clarify that the text amendments that were approved included Ordinance Nos. (2020) 1798, 1799, 1800 and 1801. The motion was seconded by Mayor Pro Tem Miller and unanimously approved. Alderman Dull then made the motion to approve the Planning Board’s Statement of Consistency. The motion was seconded by Mayor Pro Tem Miller and unanimously approved.

Mr. Edes said, “Going back to the criteria for conditional use permit applications on Page 49 in the agenda packet. When the Board is ready, I’ll read the first of nine criterion.”

1. Mr. Edes: “Was there evidence presented tonight that the conditional use applied for – that the establishment, maintenance, or operation of the conditional use will not be detrimental or endanger the public health, safety, or general welfare?” Mayor Mills: “I would suggest that the evidence was in favor of that issue. I think they’ve met that.” Mr. Edes: “I didn’t hear any evidence to the contrary. There was some discussion about fire concerns but I think Tony addressed that.”
2. Mr. Edes: “That the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor diminish or impair property values within the neighborhood.” Mayor Mills: “There was no evidence suggesting that it would be detrimental or diminish any neighboring properties. In fact, Mr. Zimmer testified just the opposite.” Mr. Edes: “The uncontested evidence was that it would enhance the community and enhance the surrounding property values.”
3. Mr. Edes: “That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.” Mayor Mills: “I think there was no evidence indicating that there was an issue there. I think all the evidence indicated that it was consistent.” Mr. Edes: “Part of the evidence in the record is the Applicant’s position on each one of these criterion; that begins on Page 54. That was received into evidence.”

4. Mr. Edes: “That the exterior architectural appeal and functional plan of any proposed structure will not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood or the character of the applicable district, so as to cause a substantial depreciation in the property values within the neighborhood.” There was Board consensus that this had been met.
5. Mr. Edes: “That adequate utilities, access roads, parking, drainage and necessary facilities have been or are being provided.” Mayor Mills: “I think all of the evidence was that they did meet that.”
6. Mr. Edes: “That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.” There was Board consensus that this had been met.
7. Mr. Edes: “That the conditional use shall, in all other respects, conform to all the applicable regulations of the district in which it is located.” Mayor Mills: “There was no evidence to the contrary.”
8. Mr. Edes: “Public access shall be provided in accordance with the recommendations of the Town’s Land Use Plan and Access Plan and/or the present amount of public access and public parking as exists within the Town now. If any recommendations are found in conflict, the system requiring the greatest quantity and quality of public access, including parking, shall govern.” The Board had no issues with that.
9. Mr. Edes: “That the proposed use be consistent with the recommendations and policy statements as described in the adopted Land Use Plan.” Mayor Mills: “I think we’ve already voiced our opinion on that. I think they’ve met all nine qualifications.”

Mr. Edes said, “If you feel that they’ve met that criteria, it would be your duty to approve the conditional use permit. However, you are entitled to make it a conditional approval. I believe Mr. Wilson talked about the Planning Board’s recommended conditions – the ten or eleven items that we discussed.” Alderman Dull noted his proposed condition for a peer review of the mooring designs. Mr. Edes said, “Their testimony was that the systems will be built to code if you want to consider that as a condition. You’d have to word that correctly because if the code doesn’t apply, you’d have to say – the code as if it were built on land.” Alderman Dull said, “This is not a stab at Mr. Wilson or the competency of anybody else in the Town or inspections, would you have the authority to review his documents to know if it was good or not. I guess we can decide who’s going to pay for that. I think they agreed that a third party peer review made sense and I think, for the Town’s liability to some degree, I’ll let you figure that out with the developer.” Mr. Edes said “I would say have the Applicant give us some sort of certification.” Alderman Dull said “It needs to be a third party, not somebody that’s hired by them.” Mr. Edes said, “My point was that I thought I heard testimony that that’s their plan anyway.” Alderman Dull said that was not what he heard. Mayor Mills said, “I think Sam did say ‘everything built according to code’.” Alderman Dull said, “Only for the mooring design structure did I feel like we needed to have a third party engineer certify his design that this thing is not going to crash into everything during a hurricane or anything. And that third party needs to be hired by somebody other than the developer so that it is an arms-length opinion.” Mr. Edes said, “Who would pay for the independent third party?” Mayor Pro Tem Miller said, “It sounds like a requirement of us.”

Mr. Edes said, “I just want to be clear when I write the condition. The Town will hire an independent third party to make this verification.” Mr. Wilson said, “We’re not getting any permit fees on this so it would be out of our pocket if you want to do that.” Mayor Mills said, “We select the third party and they pay for it.” Mr. Nichols said “That’s fine.” Mayor Pro Tem Miller said, “Just so it’s clear, how about if they propose and we pick one. They need to have some say-so in what it costs. They select the best three and we pick one and be done with it; or propose one and we pick that one - however.” Mr. Nichols said, “That’s fine.”

Mr. Edes said, “Alderman Dull, you asked the question, as I understand it, too, that they were talking about they were considering telescoping piles.” Alderman Dull said, “I didn’t get into all that; as long as they can come up with the aesthetics that they want to come up with and meet the design criteria. It sounds like they’re going to be in a line like we are with the aesthetic views and things.” Mr. Edes said, “I recommend that we also append a condition regarding the offsite construction. The representation was virtually all of it is going to be built offsite. The Applicants asked for a condition acknowledging that it will be built offsite and they won’t be accused – that their permit won’t lapse because you can’t see what’s going on in six months. I can work with Mr. Nichols on language on that condition. I recommend a condition of that nature and I think the Applicant wants it.” Mayor Mills said, “They can supply us with confirmation of what’s going on. You and Matt can work that out.” Mr. Edes said, “How about the Planning Board conditions? Do you want those?” Board consensus was ‘Yes.’ Mr. Edes said, “That was eleven so we have thirteen conditions.” He asked if the Applicant had any objections. Mr. Nichols said, “No, sir. We don’t have objections.” Mr. Edes said, “A motion to approve with these thirteen conditions would be in order if that’s the inclination of the Board.” Mayor Pro Tem Miller said, “So moved.” The motion was seconded by Mayor Mills. Alderman Dull said, “The third floor is out, obviously. I’ll just throw in there that it might be worth designing the structure so that once it’s done and it’s out there and the Town and the people have other ideas later, it might make sense to design it so that could happen in the future.” Alderman Partin agreed. The vote was then taken and recorded as unanimous for approval.

The meeting was recessed at 7:50 p.m. and reconvened at 7:55 p.m.

PUBLIC HEARING TO CONSIDER A TEXT AMENDMENT TO ADD A NEW SECTION 155.7.30 SIDEWALK CAFÉ; TO AMEND THE TABLE OF USES IN SECTION 155.6.4; AND TO ADD A NEW DEFINITION FOR SIDEWALK CAFÉ. ORDINANCE NOS. (2020) 1802, 1803 AND 1804.

Mr. Edes said, “This will be much like the last two hearings. The first one is legislative; the next one is quasi-judicial. When we get to the conditional use permit, only the evidence that comes in during that hearing can be considered.”

Mr. Wilson gave the following overview: “This text amendment to 155.7.26 with supplemental regulations would apply to C-2 Zoning Districts. We have two C-2 Zoning Districts: the Salisbury Street area and also the Oceanic Pier area at South Lumina. This text amendment, if it passes, would only apply to the one on Salisbury Street. It has to be for a standard restaurant, too. Staff received an application on March 5th for a text amendment to amend 155.7 and 155.7.30 and we’re going to be amending 155.6.4 Table of Uses to include sidewalk cafes as a conditional use with supplemental regulations in the C-2 District. The owner has appointed Architect John

Rees to serve as the authorized agent. The proposed amendment for the sidewalk café in the C-2 Commercial District would allow as a conditional use with regulations in the C-2 District in accordance with the Table of Permitted/Conditional Uses set forth in 155.6.4. And it adds that new section we discussed for sidewalk cafes. Then the Table of Uses will show it as a conditional use in the C-2. And it adds that new definition of what the sidewalk café is. On page 74, staff touched on alcohol on public property. It is staff's decision that the text amendment would supersede Section 130.03 of the UDO Consumption and Possession of Malt Beverages. Section 130.03 subsection (C) reads, "It shall be unlawful for any person to consume any alcoholic beverage on any property or premises owned or occupied by the Town." The proposed text amendment states that alcoholic beverages may be served in encroachment areas provided some requirements be met. The amendment of Definitions; Wrightsville Beach has three definitions of restaurants. We have a standard restaurant, we have a carryout restaurant, and a fast food. This text amendment adds the definition of a sidewalk café and will define it as a standard restaurant only for outside dining on public sidewalks. The Planning Board did discuss this on June 2, 2020 and they recommended this text amendment petition with the following conditions: the sidewalk encroachments under subsection (d) for standard restaurants located adjacent to public sidewalks. Under (d)(1), we changed the five feet to six feet of unobstructed area shall remain on all sidewalks adjacent to approved encroachments. The requested action is to review and discuss the proposed text amendments. You have Ordinance Nos. (2020) 1802, 1803 and 1804 and the Planning Board's Statement of Consistency."

Alderman Dull said, "Other than Salisbury Street in that exact location, where else could this occur?" Mr. Wilson replied, "I don't know of any. The only other place would be – let's say if the bar next to them changes to a standard restaurant, it could apply to them. It could apply to – let's say that Access 16 at the pier, the new building (gift shop), if they did a standard restaurant, it could apply to them but they would have to come back through this conditional use permit process to get something like that."

Mayor Mills said, "Is there anywhere on the beach where we allow public consumption of alcohol on Town property?" Mr. Wilson said he didn't know of any. Alderman Partin asked if we needed to go back to the ABC Commission for a different ABC permit. Mr. Wilson said he did not know the answer to that.

Mayor Mills opened the public hearing at 8:03 p.m.

Mr. John Rees said, "I'm John Rees, the architect representing Allen and the Shark Bar. As you know, he took over the Shark Bar and really cleaned up that restaurant. He came to me when he noticed that the sidewalk was eleven feet – this was prior to all the improvements. I looked up the code and couldn't believe there was no alfresco dining allowed in Wrightsville Beach. So, we came up with this idea and the amendment. Tony has been very helpful with that amendment. We have the width to do it and it doesn't impact the egress and everything is taken in at night. We came up with a good plan with the conditional use permit with the Planning Board. We don't have any issues with their conditions and the CUP is, again, a good part of the process for this."

Alderman Partin said, “In downtown Wilmington, they’ve started doing this some, and some of them seem to have fences. Are you anticipating putting up anything like that?” Mr. Rees replied, “No. That doesn’t really work for ingress and egress. It’s really not viable because it becomes a safety hazard. We will put little placards that designate the seating area on the ground with decals that were recommended, just so they know where to put the chairs.” Alderman Partin said, “The Planning Board said something related to dogs being allowed there.” Mr. Rees said, “They were concerned about people having their dogs sitting there. The consensus was that the dogs had to be controlled so as not to trip people and it’s harder to control an animal than it is a person. It says, ‘must be contained in this area’. So they put up one of the conditions that the dogs must be contained in the area. How that’s done – tied up and controlled or just told to leave. I think it could be any one of those situations if it’s not contained.” With no questions for Mr. Rees and no further input from the public, the hearing was closed at 8:05 p.m.

PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL USE PERMIT FOR 13 EAST SALISBURY STREET TO ALLOW FOR A SIDEWALK CAFÉ.

Mr. Edes said, “The next item on the agenda is the conditional use permit application related to this. I’m not going to repeat everything about the rules but I have to ask this question; if any of you already have your minds made up about this application and feel like you can’t base your decision or vote solely on the competent, substantial, and relevant evidence, please let me know. Madam Clerk, all indicated that that’s not the case. We’ll hear from Tony first who will introduce the item. Then we’ll hear from the Applicant and anybody else who swears or affirms to tell the truth. All those who wish to testify that are non-lawyers need to stand up and take an oath.”

Mayor Mills administered the affirmation to those wishing to speak.

Mr. Wilson gave the following overview: “This is the conditional use permit hearing for the sidewalk café located at the Shark Bar. This applies only to the C-2 District. Staff received this application on March 5, 2020 for a conditional use permit to allow the Shark Bar and Kitchen to offer a sidewalk café with seating on the public sidewalk at 13 East Salisbury Street pursuant to the proposed UDO 155.7.26 Sidewalk Café. The existing restaurant proposes to add some seating. You have a diagram showing the seating along the wall as per the application. The conditional use permit will allow seating on the public sidewalk at 13 East Salisbury Street. The lot is located in the C-2 District. The Applicant asserts that the sidewalk seating will not impede street or sidewalk pathways to the public rights of way. Even though Fire Chief Rogers gave some comments in his departmental review, he is not for this conditional use permit or the text amendment. He feels it will adversely impact some of the public on the sidewalk. Public Works Director Bill Squires asked if the added seating would add to the total occupancy of the business regarding restroom facilities, seating, noise and litter. Staff believes this would supersede 130.04 which prohibits alcohol on Town property. The proposed sidewalk on the site is eleven feet, leaving six feet, nine and a half inches for walking space on the sidewalk. Regarding space on the sidewalk, staff is concerned about the delineation between where the beverages are going to be because there could be issues when the guests leave. Further concerns involve the site plan with fixed tables abutting the wall. How do you make sure those tables are actually hitting that wall? On page 84, you see the tables against the wall – that’s the way they would have to be. The text amendment says instead of five feet, it’s going to

be a six-foot clear area there. The Police Department had no concern as long as the number of patrons met the code, ABC rules, noise expectations, and hours of operation are clearly defined. Staff recommended conditions, that in the event the Applicant violates any of the terms or conditions set forth, the permit shall be subject to revocation. Additionally, if two citations for violation of the Town's noise ordinance are issued as a result of the activities and conditional use permit within the twelve-month period, it shall be subject to review and possible revocation. The Applicant must contain all necessary state and local permits. The Applicant must comply with all Town ordinances and no outside music. On Page 85 is the list of conditions for this. The Planning Board voted 7-0 on June 2, 2020 to recommend the text amendment and the conditional use permit with the following conditions: 1) no mobile carts; 2) no smoking; 3) dogs must be contained in the area – and then, how do you contain them in the area; 4) no paper products; 5) no umbrellas; and 6) add details to the sidewalk to delineate the tables and the rest of the sidewalk. And then, if we do approve it, approve it for a two-year conditional use permit review. So, put a two-year limit on it to come back and review it at that time. The Applicant must comply with all Town ordinances. If they violate the noise ordinance, we can come back and review that again. Outside seating must be put away by 10:00 p.m. No outside music and the Applicant must obtain all necessary state and local permits." (Note: There were no questions from the Board for Mr. Wilson and no cross examination.)

Mr. Edes asked if Mr. Wilson would like to enter pages 83-99 in the Board's packet into evidence as Exhibit 1. Mr. Wilson said he would like to do that. There were no objections to that. Mayor Mills said, "So received." He then opened the public hearing at 8:20 p.m.

Mr. Rees said, "I'm John Rees, architect representing the Shark Bar. I'd like to thank Tony for his detailed explanation and for all their help. It just seems like it's a no brainer – it doesn't create any hazard. It's very consistent with that street. It actually brings a lot of life to that street in the evening with all of the improvements that we didn't even know about prior to doing this. So, the exterior will provide an appealing aspect to that street. Jim asked me to go through the nine items that we need to meet. It meets all of those nine items. There are adequate utilities; adequate measures have been taken by staff and myself to provide ingress and egress; and this conditional use, in my opinion, in all other respects conforms to applicable regulations with this amendment in place. If there are any questions, I can answer them now."

Mayor Pro Tem Miller asked if they are currently open for lunch. Mr. Rees replied, "They are doing lunch and they're only open until ten o'clock." Alderman Partin said, "Do you anticipate doing this through lunch also?" Mr. Rees replied, "Yes." Alderman Partin asked what they would do if it rains. Mr. Rees replied, "It's not going to be applicable when it rains. There are awnings existing and umbrellas are not feasible because of the hauling in and out." Alderman Partin asked if there would be enough lighting out there at night. Mr. Rees replied, "There are lights in the awnings. There's the street lighting. There's a code for lighting there as well."

Mr. Edes said, "One of the recommended conditions by the staff, if it's approved, and the Planning Board, is that all outside seating be brought in by ten o'clock. If the Board is inclined to pass the text amendment and grant this with that condition, how would you propose to insure that all of the outdoor seating is back inside by 10pm?" Mr. Rees replied, "It's a policy and procedure of the restaurant. How

would the Applicant do that; that's a good question. I think if it's the policy and procedure of the restaurant, they're not going to leave it out all night. If they do, they're subject to revoking the CUP almost immediately. Tony has put a lot of provisions in this that if there's any bad actions or if the restaurant is sold, there's almost immediate rules and regulations for that." Mr. Edes said, "Have there been discussions about that?" Mr. Rees replied, "Yes. We talked about the furniture. That is one of the reasons why we don't want to do umbrellas because umbrellas would be very difficult because they're very tall and it just wouldn't be feasible. So one of the reasons why we have no opposition to umbrellas is we think the tables can be easily brought in and brought out. So, it's been discussed and it's acknowledged that everything has to come in at night." Mr. Edes said, "You probably saw on the staff report the Fire Department's comments and concerns about the walkway and things like that, so it would be imperative, if the Board is inclined to grant this, that you keep within your lane – so to speak. And as you mentioned a while ago that if you violate the CUP, they can revoke it but my question to you, sir, have you and the owner discussed that concern?" Mr. Rees replied, "We discussed that decals would be put down to define the areas so seats don't encroach or creep and the chairs and tables don't creep. So these decals are acceptable to the owner. I think that's going to be a big benefit to those chairs and things not creeping. It was a good idea by someone on the Planning Board to come up with that idea because ropes and barricades become cumbersome in an egress situation." Mr. Edes said, "If the Board is inclined not to want decals, do you have an alternative method of staying in your lane?" Mr. Rees replied, "There would be a secondary – if they want to move, we could find a latch of some sort on the building to fix them in place." Alderman Partin said, "It sounds like y'all had thought about this before code and before the new sidewalks. So, this was before all that, correct?" Mr. Rees replied, "We did. We thought about it before I'd even seen the improvements when we realized that we would have that large sidewalk because I was going to recommend getting a palm tree and doing some brick paving out there. It just seems like it wants to be that. Every project wants to be something; this seems like this wants to be alfresco dining. That street has changed a lot with the way it's been developed in the last year. It's really becoming another restaurant row if there was another restaurant."

Mr. Jim Snow, attorney for the Shark Bar, said, "Before you step down, I just want to make sure that you – I know it's tedious but if you would just address every one of the nine so it's in the record that you've addressed them?" Mr. Rees replied, "Okay. For the record." Mr. Edes said, "That is in the record as far as the Board packet." Mr. Snow said, "That's the statute. The ordinance was not in the Planning Board packet." Mr. Rees said, "So, the establishment and maintenance or operation of the conditional use will not be detrimental – this will not be detrimental or endanger the public health, safety and general welfare. We will not do that. The conditional use will not be injurious to the use and enjoyment of the property in the immediate vicinity for the purposes already permitted nor diminish or impair property values within the neighborhood. I think it will improve property values but it will not do that. The establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for the uses permitted in this district. We've established that it is not putting any issues for surrounding property. The exterior architectural appeal and functional plan of the proposed structure will not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed

or in the course of construction in the immediate neighborhood or the character of the applicable district, so as to cause substantial depreciation in the property values in the neighborhood. Again, I don't think it will; it will probably improve the property since that street is becoming a restaurant row over there. Adequate utilities, access roads, drainage, parking or necessary facilities have been and are being provided. It doesn't change anything and they are being provided. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public street. This meets code so there is adequate measures. The conditional use shall in all respects conform to all applicable regulations in the district in which it is located. It will after the amendment is approved. Public access shall be provided in conformance with the recommendations of the Town's Land Use Plan and Access Plan and/or the present amount of public access and public parking as exists within the Town now. If any recommendations are found to conflict, the system requiring the greatest quantity and quality of public access, including parking, shall govern. We meet that. The proposed use shall be consistent with the recommendations and policy statements as described in the adopted Land Use Plan. Once the amendment is approved, we will meet the Land Use Plan."

Mr. Edes asked if they would like the physical document to come into evidence. Mr. Snow replied, "It's 155.4.5.4(E) 1-9." Mr. Edes said, "We'll receive the section of our ordinance pertaining to criteria for a conditional use permit as Exhibit 2." Mayor Mills said, "So received."

Mr. Edes said, "I'll just recap. We heard from Mr. Wilson; he introduced Exhibit 1 which is a portion of the Board packet dealing with this application; we heard from Mr. Rees on behalf of the Applicant; he made the Applicant's presentation; introduced the portion of our ordinance pertaining to the criteria for conditional use permits as Exhibit 2. Neither Mr. Wilson nor Mr. Rees were cross examined but they did receive questions and answered those questions from the Board. At this point, Mayor, we need to go back to the text amendment and if that passes, then we can proceed to this application." With no further questioning or testimony, Mayor Mills closed the evidentiary hearing at 8:25 p.m.

Alderman Dull made the motion to approve the text amendments (Ordinances (2020) 1802, 1803 and 1804) per the Planning Board's recommendations. The motion was seconded by Alderman DeGroote and unanimously approved. Alderman Dull made the motion to approve the Planning Board's Statement of Consistency. The motion was seconded by Mayor Pro Tem Miller and unanimously approved.

Alderman Dull made the motion to approve the conditional use permit. Mayor Mills said, "We can do that if everybody is satisfied that they've met all the criteria." Mr. Edes noted that Mr. Rees had testified as to the criteria and there had been no opposition to that. He said, "I would point out that there were both staff proposed conditions as well as Planning Board proposed conditions. Some of them are reflective of each other. We can cull that out so if you want to append the vote – I can draft with those if you're inclined to approve it." Mayor Mills said, "I want to make sure the Board understands that. The Fire Department raised some questions; Buck had some minor questions. We need to make sure there's a method in place that will satisfy staff to insure that the tables and the activity out there stay within the designated area. And, I'll bring it up again, we've never allowed alcohol on Town property, so just keep that in mind."

Mayor Pro Tem Miller said, “Obviously ABC allows that?” Mr. Edes replied, “Well, it would be subject to them having the appropriate permit. One of the conditions would be that they would have to have the appropriate permit. I have one more recommendation. I think it would be appropriate to consider a condition that in the event either the Applicant voluntarily ceases this operation or he sells the property or violates it and it’s revoked, that he has to restore the pavement to its original pre-decal condition. I don’t know what type of decals will be put down and that was a Planning Board recommendation.” Mr. Wilson said, “Tim and I just discussed that and we don’t want the decals out there.” Mr. Edes noted that that was not in evidence as yet. Mayor Mills said, “We can include that within the conditions. And if they don’t use it, they don’t use it and it becomes superfluous and doesn’t matter.”

Alderman Partin said, “The Planning Board said come back for a two-year CUP review, but I’d almost like to see, because this is unusual and new, to do a one-year review but not make them pay again.” Mayor Mills said, “Just to make sure that the staff is going to review it and the Applicant understands that staff will review it and if they are not in compliance, they will bring it back to us.” Mayor Pro Tem Miller said, “My assumption every time we vote on something and it has conditions is that we apply those conditions the way we’re supposed to. That’s all we can do.” Mayor Mills said, “I think Alderman Partin’s one year in this circumstance probably makes more sense.” Alderman Dull said, “I think it could be a staff review.” Mayor Pro Tem Miller said, “I don’t think it needs to come back to us unless there’s a violation.” Alderman Partin agreed. Alderman Dull said, “There could be a report that staff puts on our agenda. It could be part of our consent agenda.” Alderman Dull then made the motion that includes the Planning Board’s recommended conditions and staff’s recommended conditions along with Mr. Edes’ and Alderman Partin’s one-year review on a consent agenda basis that they report back to us after one year because it’s unchartered territory for the Town. He said, “I would also like to add that staff work with the Applicant to come up with a solution that defines where the seating will go night after night.” Mr. Edes said, “This last condition, you want the Applicant and staff to come together with like a schematic of where it’s going to be placed?” Alderman Dull said, “No, just the method of how they are going to identify that spot night after night. I think that’s what’s in question. They don’t want to put sticky decals on the ground so between staff and the Applicant, let them figure out something that the Town can live with and they can live with so their employees know where to put the tables and chairs every night.” Mr. Edes said, “I thought I understood in Mr. Rees’ testimony that they had already discussed some sort of mechanism to attach them to the wall.” Alderman Dull said, “I guess I’m saying that the decal thing, I’m modifying that to say that they don’t have to have decals but a method of identification to know where the tables go.” Mr. Edes said, “Some means to attach them to the wall?” Alderman Dull replied, “I think whatever the Town can agree with. I think whatever staff can agree with.” Mr. Rees said, “I can work with Tony on that.” Mr. Edes said, “Are you comfortable with that condition?” Mr. Rees replied, “Absolutely.”

Mayor Mills said, “So, we have a motion with conditions. Do I have a second?” The motion was seconded by Alderman Partin and unanimously approved.

**PUBLIC HEARING TO CONSIDER A TEXT AMENDMENT TO SECTION 155.2.10
OPEN SPACE REQUIREMENTS TO ALLOW STAIR/LANDINGS IN FRONT YARD
SETBACKS. ORDINANCE NO. (2020) 1797.**

Mr. Wilson gave the following overview: “This is a staff-initiated text amendment to Section 155.2.10 Open Space Requirements. In that you’ll see the exceptions to setbacks. What we did was kind of modify that to allow, if you choose to do that, modify stairs and landings in the front yard setbacks by only five feet. When we first started talking about this, we looked at the R-1 Zoning Districts. In a few minutes you may see me go over the way we apply it to the R-1 and R-2 Zoning Districts – single family and duplexes. We are planning to add that B-12 to the text amendment. This would allow for uncovered stairs and landings to encroach into front yard setbacks up to a maximum of five feet so you still have a ten-foot setback instead of fifteen. When we first thought about it, we said R-1 only. At the Planning Board level, we started getting into discussion about why don’t we allow it for R-2 and their recommendation is for R-2 as well. Currently, there is no provision to allow stairs or landings in the front yard setback. I started looking at the 1972 zoning ordinance and in that ordinance, they did allow for steps to be located in the setback. You see the staff-recommended conditions. Our first thoughts were just for the R-1 Zoning Districts. The next thing would be to allow for nonconforming structures. After discussion, the Planning Board’s recommendation was to add it for the R-2 – but it would be only for single family and duplexes; it would not be for multifamily. We talked about the nonconforming structures, that would mean the structure is an older structure probably, it would be in the setback somewhere but below flood. Sometimes we get those questions from older home owners who want to add stairs and we basically say ‘you can’t because it’s in the setback’. The Planning Board came up with a maximum width that they could be – only 36 inches. They wanted to somehow not let you put a big, wide five foot or ten foot – so we settled on 36 inches. Then we started talking about a date; what date would you come up with. We were all over the board from prior to 1970 to the Planning Board’s recommendation of prior to 1990. We talked about these dates and started looking at maybe the surveys – the Town probably started getting a lot of surveys in the nineties and we picked that date. It doesn’t mean we have to do it here tonight if you think another date is possible or if you do it from today’s date. But it was not going to be for new structures – just the older homes – nonconforming structures. You have the application, the ordinance and the Planning Board’s statement of consistency.”

Alderman Dull said, “So, Planning Board recommendations – did they just go over this this week?” Mr. Wilson replied, “Yes, Tuesday night.” Alderman Dull said, “I’d like to see that kind of written down.” Mr. Wilson said, “Even though the Planning Board met, it should have gone out under separate cover but those are the conditions they have on there.” Alderman Partin said, “This was staff initiated – you haven’t had any requests?” Mr. Wilson replied, “We’ve had inquiries.” Mayor Pro Tem Miller said, “Tell me again why 1990?” Mr. Wilson replied, “Well, I started thinking about surveys. I picked 1970 because it was a pre-firm date and was in our ordinance. Then I got questions about why I picked 1970. So we starting talking about what date to pick and the fact that we started getting site plans in the nineties.” Alderman Dull said, “Why can’t any house, even if it’s new, have stairs that meet the criteria?”

Mayor Mills opened the public hearing at 8:41 p.m.

Mr. Mike Edmonds, 601 North Channel Drive, said, “To answer your question, the new houses, if you come up to a triple lot, you could build a house in excess of 6,000 square feet on that triple lot if you go forty feet high, seven and a half to the sides, fifteen to the front; no telling what you can get in the back. Why can’t they fit

those stairs inside that area? I can't think of a reason a competent architect could not. Michael Kersting certainly could get those stairs inside that setback. My personal home was built in 1958 by Shore Acres Company but the bottom set of those stairs is eight feet from the inside of the sidewalk – not the street side. If you go up and down North Channel Drive, and I talked about how narrow it is when I first came in, in particular how narrow it is and it curves when you get down below Fourth Avenue or above Fourth Avenue – down to the cul de sac. But you'll see most of those older homes that predated 1990 will have stairs in the setback. Some of them have covered stairs. There's a house at the very end of the cul de sac at Channel Drive that their stairs come down two feet off the sidewalk. At that time, it was not Wrightsville Beach; it was Harbor Island. There wasn't anything other than the North Carolina Building Code that came into play at that time. I think if a person has a compelling need; if they have a handicap egress issue, perhaps we should hear this thing on a case-by-case basis. I don't see this coming into being something that's a good idea all the way across the board, especially on new construction because you see everybody as a matter of course – who would not want to build as close as they can? This gets into the canyon effect – people getting closer and closer to the street as you look down the street where it's getting narrower and narrower. So, unless Tony has a really good reason for staff wanting this, I would encourage y'all to turn it down at this point in time. I don't see a big benefit unless somebody really needs something. I'm so happy that it would not apply to new construction. If we have an older neighbor that needs something, let them come and you can review on a case-by-case basis." (Mr. Edmonds referenced an email from his neighbor Lori Rosbrough regarding this matter. The Board said they had already received a copy.)

Mayor Pro Tem Miller said, "To Mike's point, if we didn't do this, and you just say it's been asked before and it's not allowed, so how does somebody...?" Mr. Wilson replied, "The only other thing is, and you'll hear it from different people, would be in the form of a variance. Sometimes you talk to attorneys and they ask how you can present a hardship. So, that's the other issue. How can an individual meet those findings of facts is the other issue." Mayor Pro Tem Miller said, "I think that's why we're even looking at this – is my question. To answer Mike's question, that's why you're considering it because you have been asked multiple times."

Mr. Charlie Rivenbark, said, "I'm speaking on behalf of my daughter and son in law, I can't believe somebody let that house be built or rebuilt with one set of stairs going under the house and straight up. If the downstairs ever caught on fire, it would be a disaster. I have to make some tough decisions sometimes and they're not always real popular and whatever y'all do tonight, so be it and I'll back you a hundred percent but I think you might need to change it up a little bit. And I understand what this gentleman was saying. Wrightsville Beach has always kept Wrightsville Beach Wrightsville Beach and that's why everybody wants to be here. But every now and then you have to make a tough decision." Mayor Pro Tem Miller said, "You're telling me that your son and daughter have an issue with the stairs that would fall under this?" Mr. Rivenbark replied, "Absolutely. And they've had an engineer out there and they've looked at it."

Mrs. Monica Lachman, 104 South Channel Drive, said, "When we first got into the house at 104 Channel Drive, I couldn't believe that there was not another set of stairs to get out of the house. They're inside and very narrow. It's a safety issue. We have kids. If something happened downstairs, we'd have to jump off the porch. I have

very severe arthritis and jumping off the porch would be a death sentence for me. So, I would appreciate your consideration. And I understand that it's a text amendment but I really do think that we are justified in your making a decision in our favor." Mayor Pro Tem Miller said, "So, these stairs that you mentioned – they're not straight?" Mrs. Lachman replied, "No, they turn." Mayor Pro Tem Miller said, "They actually turn three times." Mrs. Lachman replied, "Yes, correct." Mayor Pro Tem Miller said, "And tell the Board about the set of steps that you want to put outside. Actually the landing is what lands in the setback, is that correct?" Mrs. Lachman replied, "Correct. It's the landing." Mayor Pro Tem Miller said, "Everything else is to the setback?" Mrs. Lachman replied, "Correct. It's just the landing that would be outside the setback."

Mr. Jerry Lachman, 104 South Channel Drive, said, "The way the steps are, we're actually encroaching – we're going up at least five feet up on our roof to make a structure up there to attach to the upper deck. There were two big palm trees; this would take the place of the palm trees."

Mr. Edmonds said, "If it's a true emergency egress situation, I concur. If it's a safety issue, I think some consideration should be allowed."

With no further public input, Mayor Mills closed the hearing at 8:53 p.m.

Alderman Dull said, "I think the staff along with the Planning Board beat this horse to death and I think what they came up with was a practical solution where you're allowing a five-foot encroachment into the setback for stairs. You're not going to get but so much in there anyway. Even though it's a broad brush, I personally, don't have a problem with it."

Mayor Pro Tem Miller said, "To me, 1990 just fell out of the sky. Is there a way to tighten it up?" Alderman Dull said, "You could go further back to give it a little more bite." Mayor Pro Tem Miller said, "Does it make any sense to go back further and deal with it?" Alderman Dull replied, "We could start with the 1970 Pre-firm. There might be some legitimacy of picking that date." Mayor Pro Tem Miller said, "I'm always worried about unintended consequences." Mayor Mills said, "I think we've got a legitimate concern here about the timeframe." Mayor Pro Tem Miller said, "I'd rather err on the side of caution and back it up." Alderman Dull said, "So, 1970s?" Mayor Pro Tem Miller replied, "Yes." Alderman Dull said, "I'll make the motion to adopt Ordinance No. (2020) 1797 as presented with the comments that we heard from Tony Wilson and changing the 1990 date back to the Pre-Firm date of 1970." The motion was seconded by Mayor Mills and unanimously approved.

PUBLIC HEARING TO CONSIDER TEXT AMENDMENTS TO AMEND SECTIONS 155.6.4, 155.7.18 AND A.3 DEFINITIONS OF THE WIRELESS FACILITIES ORDINANCES. ORDINANCE NO. (2020) 1796.

Mr. Wilson gave the following overview: "We have had attorney review and a third party review of the proposed text amendment. This request is from former Town Attorney John Wessell to address updated guidelines on wireless communication facilities. Our existing ordinance does not address new technologies and the needs of wireless companies. This went to the Planning Board for review." Following a brief review of the proposed ordinance, Mr. Wilson submitted the text amendment and the statement of consistency for consideration. Mr. Edes noted that Michael Brough of the Brough Law Firm assisted in this and they're doing it throughout the state.

Following a brief discussion regarding the reasoning behind the proposed text amendment, Mr. Owens said, “This clarifies what the state says and it gives us the ability to do encroachment agreements.”

Mayor Mills opened the public hearing at 9:03 p.m. With no members of the public wishing to speak, the public hearing was closed at 9:04 p.m.

Mayor Pro Tem Miller made the motion to adopt Ordinance No. (2020) 1796. The motion was seconded by Alderman DeGroot and unanimously approved.

DISCUSSION AND DIRECTION ON EXTENDING THE PIER HEAD LINE AT 110-111 SEAPATH ESTATES. (CONTINUED FROM JUNE 11, 2020 BOARD OF ALDERMEN MEETING.) RESOLUTION NO. (2020) 2204.

Mr. Owens stated that the Applicant had asked to continue this item. The Board so agreed.

CONSIDERATION OF ORDINANCE NO. (2020) 1795 TO AMEND SCHEDULE III PROHIBITED PARKING OF CHAPTER 76 TO PROHIBIT PARKING ON THE WESTERN END OF CAUSEWAY DRIVE AND UNDER THE DRAWBRIDGE.

Mr. Owens said, “What we’re trying to do is restrict parking underneath the bridge from Old Causeway to the boat ramp. The state does not maintain that road so we may have to do a little maintenance on it. This will stop a lot of different things like the trash that’s under there.” Mayor Pro Tem Miller asked what we were going to do to restrict it. Mr. Owens replied, “We’re going to put signs up and then ask the parking company to enforce.” Alderman Partin asked if we would put up a sign like we had before to direct vehicles with boat trailers to go under the bridge in that direction. Mayor Pro Tem Miller said, “That was before they changed that whole intersection; they gave them a dedicated left over because the boat owners were complaining about going under there and taking that big wide turn.” Alderman Dull then made the motion to adopt Ordinance No. (2020) 1795. The motion was seconded by Mayor Mills and unanimously approved.

ALDERMAN PARTIN: OTHER ITEMS AND REPORTS.

- The Flotilla Committee is going to recommend that they do not hold the Friday night party at the Blockade Runner this year unless the Blockade Runner changes their mind; they are not going to do the Saturday Day in the Park; they’re hoping to have the Flotilla Boat Parade but they will not give out prizes; and they are also hoping to do the fireworks.

ALDERMAN DULL: OTHER ITEMS AND REPORTS.

- The Ports Waterway Committee got the letter signed by the Pentagon but we still have a few yards to go before we get to the goal line. If all is passed, we are funded through 2036. We also had a two-hour phone call today regarding how we’re going to address the sand pumping on the beach. All three beaches are going to get re-nourished in the Spring of 2022 (\$35 million).

MAYOR PRO TEM MILLER: OTHER ITEMS AND REPORTS.

- The MPO met by Zoom Conference. We continue to plan on 2045 but nothing of substance to report.

MAYOR MILLS: OTHER ITEMS AND REPORTS.

- The TDA met and adopted a budget.
- Appreciation for staff's patience and efforts for all we've been through.

MS. HOLLEMAN: OTHER ITEMS AND REPORTS.

- Ms. Holleman expressed sadness at the passing of Marjorie Way on June 20th. She said Mrs. Way had served on many boards and committees over the years and was currently a member of the Historic Landmark Commission.

MR. EDES: OTHER ITEMS AND REPORTS.

- House Bill 593 passed on July 1st that pertains to locally declared states of emergency to be valid going forward – even if there's one in place now that you amended. You have to put it on the Town website and you also have to publish it with the NC Department of Public Safety's web and EOC site. The purpose of that is so all the local SOEs are in one data base. Tim and I will get together and revise our ordinances accordingly.
- Mr. Edes reviewed a U.S. District Court ruling regarding certain businesses having to remain closed because of the COVID-19 Pandemic.

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE BOARD, THE MEETING WAS ADJOURNED AT 9:14 P.M.

Respectfully submitted,

Sylvia J. Holleman
Town Clerk