BOARD OF ALDERMEN MINUTES

JULY 11, 2024, 5:30PM

TOWN HALL COUNCIL CHAMBERS, 321 CAUSEWAY DRIVE, WRIGHTSVILLE BEACH

The meeting was called to order at 5:30pm by Mayor Mills. After the Pledge of Allegiance, the invocation was provided by Caroline Jinkins, Pastor, Little Chapel on the Boardwalk. The following were present:

Board of Aldermen	**Staff**
F. Darryl Mills, Mayor	Tony Wilson, Acting Town Manager
Hank Miller, Mayor Pro-tem (via Zoom)	Lance G. Heater, Town Clerk
Jeff DeGroote, Alderman	Brian E. Edes, Town Attorney
Ken Dull, Alderman	Brian Murray, Finance Officer
Vivian (Zeke) Partin, Alderman	Bill Fay, Public Works Director

Upon motion by Dull, seconded by Mills and carried unanimously, the Board approved the remote participation of Miller.

PUBLIC COMMENTS – *None.*

CONSENT AGENDA

Upon motion by Partin, seconded by DeGroote and carried unanimously, the Board approved the consent agenda. It consisted of the following: 1) approval of the minutes of minutes of the 6-13-24 regular meeting, the 6-21-24 special called meeting, and the open and closed session minutes of the 6-24-24 special called meeting; 2) acknowledgement of previously-approved special events for August; 3) approval of Resolution (2024) 2333 exempting the Town from the requirements of NCGS 143-64.31 to allow for the procurement of engineering services related to the W. Atlanta St. bulkhead project; 4) approval of Resolution (2024) 2334 exempting the Town from the requirements of NCGS 143-64.31 to allow for the procurement of engineering services related to the W. Oxford St. bulkhead project; 5) approval of Budget Ordinance (2024) 624-B receiving and appropriating ABC grant funding for the Police Department; 6) approval of Budget Ordinance (2024) 625-B closing certain capital project funds; 7) approval of Budget Ordinance (2024) 626-B funding engineering services for the W. Atlanta St. and W. Oxford St. bulkhead projects; 8) approval of Budget Ordinance (2024) 627-B funding projects or purchases that were approved in FY23/24 but were not able to be completed by 6/30/24; and 9) approval of Budget Ordinance (2024) 628-B funding various Parks & Recreation items.

PRESENTATIONS – *None.*

PUBLIC HEARING #1

At 5:40pm the Board considered conducting a public hearing and approval of a special use permit modification request by 1 Stone Street Partners, LLC for property located at 4 N. Lumina Ave. Edes noted, that as this was a quasi-judicial proceeding, he needed to ask the Board certain questions, to which each member responded in the negative: 1) does anyone have a financial interest in the subject matter? 2) does anyone have a close business or family relationship with the applicant? 3) have any of you visited the property for the purpose of assessing this application? 4) has anyone had any conversations with the staff regarding the subject matter of this application? 5) has anyone had any conversations with the applicant regarding the subject matter of this application? Edes noted that all witnesses would be sworn in and that the applicant had the burden of proof that its evidence meets the criteria found on page 55-56 of the agenda packet. The Clerk then administered the oath to all persons who wished to offer evidence.

Wilson stated that on April 2, 2024, 1 Stone Street Partners, LLC at Wrightsville Beach, LLC submitted an application for a special-use permit located at 4 North Lumina Avenue and that Samuel B. Franck is the authorized agent for the owners and the tenant. Wilson said the application was an amendment to an original conditional use permit and that the property was located in the C-1 Commercial District. Wilson said the proposed project would involve: 1) expansion of kitchen space to include the former interior stairwell; 2) adapting the use of the common area alley between buildings to allow for full restaurant service to include alcohol service (28 seats); and 3) adapting the interior layout of the former Cafe Del Mar section of the restaurant by removing the bar to incorporate additional restaurant seating.

Wilson stated that on April 23, 2024, Staff met with department heads to discuss the proposed special use permit project with the following comments being made: 1) exterior lighting will be required to meet the lighting ordinance; 2) if alcohol sales are approved for Tower 7, would this include the area for Vito's; 3) if any fencing or barriers are installed, they should be no greater than 4 feet in height; 4) any occupancy increase will require a parking exception or a larger grease trap; 5) trash cans will be needed in the area; and 6) noise concerns for the residents above Tower 7. Wilson said that the legal advertisement announcing the July 11, 2024 BOA meeting ran on June 28, 2024 in the Star News, that the site was posted on June 28, 2024 and adjacent property notifications were sent out.

Wilson said the proposal was consistent with the CAMA Land Use Policies, particularly Section 5, Goals and Implementing Actions, numbers 1 and 2. Wilson reported that the Planning Board reviewed the site plan for the SUP on May 7, 2024 and moved this agenda item to the Board of Aldermen for consideration.

Wilson reviewed the staff-recommended conditions for granting the permit as follows: 1) all lighting shall meet Town Ordinances; 2) that the project shall be developed in accordance with the application, site plan and all other materials submitted by the applicant and approved by the Town; 3) that this Special Use Permit comply with all other supplemental regulations and requirements imposed by the Zoning Ordinance or any other applicable federal, state or local law, ordinance or regulations and that in the event of a conflict, the more stringent requirement or higher standard shall apply; 4) that in the event the applicant violates any of the terms and conditions as set forth herein or develops the property in a manner different than that out lined in the plan submitted by the applicant, this permit shall be subject to revocation; 5) if the property owner receives two or more citations for noise violations within a twelve-month period, the Special use permit shall be subject to review and possible revocation; 6) no customers shall be seated after 10:00 p.m. and that all staff and customers must vacate the premises and the premises must be closed by 11 :00 p.m. each night; 7) no live music of any kind whatsoever may be permitted in the alley area; 8) no televisions of any kind shall be permitted in the alley area; and 9) the alley is subject to an easement permitting the public a right of passage through the alley.

In response to a question from Miller, Wilson stated that the staff's condition relating to operating hours was similar to that requested of other restaurants seeking SUPs. In response to a second question from Miller, Wilson stated that, if the operating hours were set as requested in the staff conditions, this would have no effect on the immediately adjacent restaurant.

Edes noted that pages 54-117 of the agenda packet were introduced as Exhibit 1 without objection from the applicant. In response to a question from Edes, Wilson stated that the staff had reviewed the criteria for granting the special use permit in Section 155.4.5.4(E) of the Town Code and found that those criteria were met, with the additional 9 conditions listed.

There was no cross examination of Wilson by the applicant.

The Board then heard from Samuel Franck, representing the applicant, who introduced a 12 slide power point relating to the application, which the Board received as Exhibit. 2. Franck also introduced a letter from Cal Morgan, representing JC Morgan Company appraisers, which the Board received as Exhibit 3. Frank stated that the special use permit amendment covered 3 areas: 1) that the space formerly used by a stairwell that is no longer utilized be allowed to be used for the expansion of the kitchen; 2) a renovation of the interior layout, taking former bar space and incorporating table spaces, with no additional seating being provided; and 3) to change the rules regarding outdoor service to allow for full restaurant service, which would include alcohol sales. Franck then reviewed the power point, which illustrated the changes requested.

Franck noted that the applicant had requested an evaluation from an appraiser regarding the question as to whether granting the SUP amendment would affect neighboring property values. This was provided in the letter from Cal Morgan dated 5/29/24 which stated that there was no indication that the proposed changes would have a negative impact on the values of surrounding properties or those within the neighborhood.

Franck stated that, if approved, alcohol service would only be available through a server and would therefore be controlled. Regarding the conditions proposed by staff, Franck stated the applicant did not object to most of the conditions proposed by the staff. However, regarding hours of operation, Franck stated that the current conditional use permit does not limit hours of operation on indoor service at the restaurant and he did not believe that restrictions should be placed on indoor operations as a result of this application. With regard to outdoor service, Franck proposed the restriction to be that no one would be seated outside after 10:00pm and that there would be no more service after 11:00pm.

In response to a question from Mills, Brian Brennan, of Tower 7, reviewed the proposed fencing (with an access gate) that would be installed. There was then a discussion regarding fencing, with the consensus of the Board being that the fence should be at least 50% transparent and no higher than 48 inches enclosing the common alley between 6 N. Lumina Ave. and 8 N. Lumina Ave. as exhibited in Slide 7 of Exhibit 2.

Miller expressed a desire to add a limitation on inside seating to state that no persons should be seated after 12 midnight. Ross Tomaselli, representing 1 Stone Street Partners, expressed concern that this restriction would apply to future tenants of the building. After consultation with the applicant, Franck stated that they would be amenable to a limitation that no persons be seated inside after 12 midnight. It was the consensus of the Board that this condition be added.

There being no further comments, the public hearing was closed at 6:21pm.

Upon motion by Dull, seconded by Mills and carried unanimously, the Board approved the special use permit modification with the following conditions: 1) all lighting shall meet Town Ordinances; 2) that the project shall be developed in accordance with the application, site plan and all other materials submitted by the applicant and approved by the Town; 3) that this Special Use Permit comply with all other supplemental regulations and requirements imposed by the Unified Development Ordinance or any other applicable federal, state or local law, ordinance or regulations. In the event of a conflict, the more stringent requirement or higher standard shall apply; 4) that in the event the applicant violates any of the terms and conditions as set forth herein or develops the property in a manner different than that out lined in the plan submitted by the applicant, this permit shall be subject to revocation; 5) if the property owner receives two or more citations for noise violations within a twelve-month period, the special use permit shall be subject to review and possible revocation; 6) no live music of any kind whatsoever may be permitted in the alley area; 7) no televisions of any kind shall be permitted in the alley area; 8) the alley is subject to an easement permitting the public a right of passage through the alley; 9) no customers shall be seated outside after 10:00pm. and no food or drink shall be served outside after 11:00pm; 10) no food or drink shall be served inside after 12 midnight; and 11) there shall be a fence that maintained that is at least 50%

transparent and 48 inches in height enclosing the common alley between 6 North Lumina and 8 North Lumina as exhibited in Slide 7 of Exhibit 2.

PUBLIC HEARING #2

The Board considered conducting a public hearing and considering a request for a pier and dock exception for 502-504 N. Channel Dr. Wilson stated that the request did not require a public hearing, however, the applicants requested that a public hearing be held. Therefore, staff had advertised the matter and notified adjacent property owners of the hearing. Wilson stated that the Planning and Inspections Department received a request for a Pier and Dock exception from B & D Investments, LLC (Owner of 502 N. Channel Dr.) and Linda B. Grew (Owner of 504 N. Channel Dr.) for a proposed pier and dock plan. Wilson noted that the attorneys representing the property owners at 502 N Channel Drive were Ryal W. Tayloe and Madeline Williams with Ward and Smith and Matthew A. Nichols representing the owners of 504 N. Channel. Wilson said the proposed redesign of the adjacent residential docks and pier will consist of a new shared boat docking facility for 502 and 504 N. Channel Dr. The existing and redesigned shared docks at 502 and 504 N. Channel would not be in the applicant's projected property lines and instead would be closer than 15 feet of the property lines extended, with the dock being closer than 15 feet to the existing pier located at 504 N Channel Drive. Each property owner would have 1 boat lift and 1 wet slip.

Wilson stated that the site plan for 502 and 504 North Channel Drive had been revised since the January 9, 2024 Planning Board meeting. During that meeting, Board members requested that the covered gazebo on 502 North Channel be moved to the north side and the wet slip be eliminated. Wilson stated that the pier/dock, wet slip and boat lift were in the same location at 504 North Channel Drive. Wilson reported that the property owners of 504 North Channel have approval for the proposed location of the pier and dock from the property owners of 506 North Channel Drive.

Wilson reviewed 2 options for the Board to consider, with Option 1 proposing a shared dock with each property owner having one boat lift and one wet slip and with Option 2 proposing a shared dock with for 502 N. Channel with one boat lift and where 504 N Channel would have one boat lift and one wet slip. Wilson stated that the proposed pier was not compliant with §150.12 General Pier and Dock Construction Requirements, however, the Board had the authority to grant an exception as a result of careful study of unusual and difficult situations which occur if it appears to be clearly in the best public interest and safety.

The Mayor declared the public hearing open at 6:35pm. Nichols, representing Robert and Lynda Grew, and Madeline Williams, representing B&D Investments, LLC were present to review the request and respond to questions from the Board.

There being no other persons present to comment, the Mayor declared the public hearing closed. Upon motion by Partin, seconded by Dull and carried unanimously, the Board approved the requested Option 1.

CONSIDER A REPORT FROM ALDERMAN PARTIN AND THE AD HOC COMMITTEE REGARDING THE LIGHTING ORDINANCE

By consensus, the Board deferred consideration of this item, with the understanding that it would first be considered by the Planning Board.

CONSIDER ADOPTION, ON FIRST READING, OF RESOLUTION (2024) 2335 JOINING WITH NEW HANOVER COUNTY TO ENFOCE AND REMOVE ABANDONED VESSELS IN WATERWAYS

Wilson explained that this was a request from New Hanover County that would speed up the process of removing abandoned vessels from the Town’s waterways. The proposed Resolution needed to be approved on two readings due to it having the same effect of adopting an ordinance which contains criminal penalties. Upon motion by Miller, seconded by DeGroote and carried unanimously, the Resolution was approved on first reading.

CONSIDER ADOPTION OF RESOLUTION (2024) 2336 APPROVING AMENDMENT TEN TO THE OPTION AND LEASE AGREEMENT BETWEEN THE TOWN AND NEW CINGULAR WIRELESS PCS, LLC

Wilson explained that the lease covered equipment located on the Town's water tower at 338 S. Lumina Ave. By consensus, the Board deferred action on the item until it could be reviewed by the CFPUA due to the impending merger of water and sewer facilities.

DISCUSS AND CONSIDER AUTHORIZING THE ACTING TOWN MANAGER TO SUBMIT A FUNDING APPLICATION TO NCDEQ FOR A FIND AND REPLACE WATER SERVICE LINE PROJECT

Public Works Director Fay stated that the Town had contracted with McKim & Creed to assist with the Lead & Copper Compliance Program Assistance, Phase1 consisting of: 1) data collection and analysis; 2) preparation of service line inventory; and 3) funding procurement assistance. Fay recommended that the Board allow McKim and Creed to submit, on behalf of the Town, the funding application package for a loan, or possibly a grant, for the full funding amount of $2M for the Find and Replace project. If awarded, this would cover the costs of the inventory, the field verification, replacement of any service lines that required, and all associated activity, based on current assumptions and estimates. Fay stated that if funding is approved, the item would be brought back to the Board for acceptance and that the status of CFPUA merger at that time may be a determining factor in this decision. Upon motion by Dull, seconded by DeGroote and carried unanimously, the request was approved.

OTHER ITEMS AND REPORTS

A. **Alderman DeGroote: c**ommended Ocean Rescue for doing an excellent job over the July 4th holiday, noting that a number of rescues were performed and congratulated Murray on the Town receiving the Excellence in Financial Reporting award from the Government Finance Officers Association.
B. **Mayor Mills**: recognized Acting Police Chief Jason Bishop and reiterated the Board's support for the Police Department.
C. **Alderman Dull**: also congratulated Murray and noted that Sylvia Holleman, retired Town Clerk, had passed away recently.
D. **Alderman Partin**: noted that the TDA funding request had been completed.
E. **Mayor Pro Tem Miller**: reiterated support for Bishop; expressed appreciation to Wilson for his efforts over the July 4th holiday; and announced that the Governor would be in Wilmington on 7/17 for a major announcement.
F. **Acting Town Manager Wilson:** recognized all departments which were involved with the July 4th efforts; announced that staff would conduct a hurricane workshop on 7/17.
G. **Town Attorney Edes:** nothing to report.
H. **Town Clerk Heater:** reminded all that the Board would hold a special called meeting on July 26, 2024 at 2:15pm in the Conference Room, Town Hall to consider, in closed session, candidates for the City Manager position.

Alderman Dull had to leave the meeting at this point (7:20pm)

CLOSED SESSION TO CONSULT WITH AN ATTORNEY EMPLOYED OR RETAINED BY THE PUBLIC BODY IN ORDER TO PRESERVE THE ATTORNEY-CLIENT PRIVILEGE AS PROVIDED UNDER NCGS 143-318.11(A)(3)

At 7:20pm Partin made a motion to enter into closed session for the purpose of consulting with an attorney as provided under NCGS 143-318.11(A)(3). The motion was seconded by Mills and carried unanimously.

Upon motion by DeGroote, seconded by Mills and carried unanimously, the Board returned to open session at 7:39pm, with no action being taken as a result of the closed session.

There being no further business, the meeting was adjourned at 7:39pm.

Respectfully submitted,

Lance G. Heater, Town Clerk