



## WRIGHTSVILLE BEACH PLANNING BOARD MINUTES

321 Causeway Drive, Wrightsville Beach, NC 28480

**May 3, 2016**

The Town of Wrightsville Beach Planning Board met at 6:00 p.m. in the Town Hall Council Chambers located at 321 Causeway Drive, Wrightsville Beach, NC 28480.

**PRESENT:** Chairman Ken Dull, Vice Chairperson Susan Snider, David Culp, Vivian "Zeke" Partin, Jim Smith, Thomas "Ace" Cofer, Janice Clark

**ABSENT:** None

**Staff Members Present:** Tony Wilson, Director of Planning & Parks  
Zachary Steffey, Town Planner

### CALL TO ORDER

Meeting called to order by Chairman Ken Dull at 6:02 p.m.

### PLEDGE OF ALLEGIANCE

Chairman Ken Dull led the audience in the Pledge of Allegiance.

### APPROVAL OF MINUTES

Ms. Zeke Partin had requested two changes to the minutes from the April 5, 2016 Planning Board meeting. The changes to the minutes were made prior to the beginning of the meeting and were included in the Planning Board's meeting binders.

Mr. Jim Smith had requested a change to the minutes from the April 5, 2016 Planning

Board meeting. The change included clarification of the motion on page 7. The change requested the word "additional" be added. The motion will now read, "to include the following additional conditions..."

Mr. Jim Smith also requested clarification of the intent to maximize the July 4<sup>th</sup> holiday to a maximum of four days. Mr. Tony Wilson responded that he believed that this was the intent and the Town Attorney would be consulted for the correct wording prior to the Board of Aldermen meeting.

#### **MOTION:**

**...Motion by Ms. Janice Clark to approve the amended minutes from the April 5, 2016 Planning Board meeting. Motion seconded by Ms. Zeke Partin and carried unanimously by a vote of (7-0).**

#### **NEW BUSINESS**

Mr. Ken Dull stated that he received a request from Town Staff to consider Agenda Item C before the other items on the meeting's Agenda.

#### **AGENDA ITEM C:**

**CONSIDERATION OF A CONDITIONAL USE PERMIT FOR 216-218 CAUSEWAY DRIVE, TO OPERATE A COMMERCIAL PARKING LOT CONSISTING OF 13 SPACES FOR USE BY THE CUSTOMERS OF POE'S TAVERN.**

#### **REQUESTED ACTION:**

Town Staff in coordination with the applicant asked that the matter be to opened and continued to the June 7, 2016 Planning Board meeting.

#### **MOTION:**

**...Motion by Ms. Janice Clark to approve opening and continuing Agenda Item C to the June 7, 2016 Planning Board meeting. Motion seconded by Ms. Susan Snider and carried unanimously by a vote of (7-0).**

AGENDA ITEM A:

CONSIDERATION OF A TEXT AMENDMENT TO SECTION 155.9.1.6 EXCEPTION IN PARKING REQUIREMENTS TO MODIFY SUBSECTION (C) WHICH STIPULATES THE CRITERIA UPON WHICH THE BOARD OF ALDERMEN MAY GRANT AN EXCEPTION TO THE OFF-STREET PARKING REQUIREMENTS OF THE TOWN.

Mr. Steffey informed the Planning Board that the applicant had requested that *Section 155.9.1.6 Exception in Parking Requirements (C) (5)* be amended to expand the situations in which the Board of Aldermen can issue an exception to the off-street parking requirements for properties located in the C-1, C-2, and C-3 commercial zoning districts of the Town.

## REQUEST BY AUTHORIZED AGENT ON BEHALF OF THE APPLICANT:

Mr. Joseph Taylor Jr. Esq., authorized agent for the applicant, said that when Section 155.9.1.6 was written, the original ordinance was designed to apply to both reconstructed buildings and mixed-use buildings. He said that he believed when the ordinance was rewritten they left the words out that would have included reconstructed buildings. He believed it was clearly intended to be included from the start. He stated it would be impossible for any of the commercial buildings to be redone without waivers and extensions from the Board of Aldermen. He stated that he had originally drafted and submitted to the board the ordinance that replaced the words in the off-street parking requirements to allow an exception to be granted for mixed use and reconstructed buildings. He then stated that Mr. Tony Wilson, Mr. Zach Steffey, and Mr. John Wessell the Town Attorney, looked at the ordinance and decided to expand and clarify the things that were changed; instead of all commercial the ordinance would just apply to C-1, C-2, and C-3 zoning districts. He stated that as Mr. Steffey had mentioned, two more provisions were added. He then stated that the fifth provision, the exception for employee off-street parking had been added. He said that the existing parking exception requirements allowed for parking exceptions for customers, but did not address an exception for employee parking. Mr. Taylor stated that after review by Town Staff, the Town Attorney, and the applicant; all parties are satisfied with the proposed wording.

Mr. Dull asked the Board if they had any questions for Mr. Taylor.

Mr. Ace Cofer asked if the reason the agenda item had been continued from last month was to change the syntax of item number 3, alterations or conversions of an existing building in the commercial district, and to expand upon it. Mr. Taylor

responded that this was the reason for the continuance, and that the Staff had discovered at the last minute that the ordinance did not give the town authority to grant a parking exception for the employees. He believed this was clearly intended by the original ordinance and needed to be corrected to reflect this intent.

#### PUBLIC HEARING:

Chairman Dull opened the public hearing on the proposed text amendment.

#### IN FAVOR:

No members of the audience spoke in favor.

#### OPPOSED:

No members of the audience spoke in opposition.

#### PLANNING BOARD DISCUSSION:

Mr. Jim Smith asked Mr. Wilson if there was a commercial lot for employees. Mr. Wilson stated that the Town does have one, and they sell passes to some businesses. Mr. Smith then stated that if the board does not approve this item, then they could be rendering some properties useless and this does not do the Town or the applicant any good.

Mr. David Culp asked if they needed to mention the existing commercial lot in the ordinance. Ms. Zeke Partin asked about the cost of parking in the lot. A member of the audience (Mr. Bill Baggett) answered that the cost was \$250 per spot, per year.

The Planning Board discussed the benefits of these changes, the increased flexibility for Board of Aldermen to allow for exceptions, and the convenience and benefits to business owners and their employees.

#### MOTION:

**...Motion by Ms. Clark to offer a favorable recommendation to the Board of Aldermen of the Text Amendment to Section 155.9.1.6 as presented, the motion was seconded by Ms. Partin and carried unanimously by a vote of (7-0).**

AGENDA ITEM B:

CONSIDERATION OF A CONDITIONAL USE PERMIT APPLICATION AND A PARKING EXCEPTION REQUEST FOR 13 EAST SALISBURY STREET, TO ALLOW FOR THE OPERATION OF A FULL SERVICE RESTAURANT AFTER REVOVATIONS ARE COMPLETED TO THE EXISTING TWO-STORY STRCTURE. THIS MATTER WAS OPENED AND CONTINUED AT THE APRIL 5, 2016 PLANNING BOARD MEETING.

## STAFF PRESENTATION:

Mr. Steffey said that the Planning Department received a Conditional Use Permit application for 13 East Salisbury Street to operate a full-service restaurant serving breakfast, lunch, and dinner throughout the year. He said that the new restaurant will require substantial interior renovations and minor landscaping enhancements prior to opening. He said the renovations will be subject to the FEMA 50% rule. Mr. Steffey said the applicant will need a Parking Exception for 27 parking spaces.

Mr. Steffey read departmental comments on this request, the first comment received from Mr. Dan House, Chief of Police at Wrightsville Beach Police Department. Mr. House stated that the previous owners of 13 East Salisbury Street originally began as a restaurant and quickly turned into a bar and night club resulting in 178 complaints about noise and alcohol issues over a five-year period. Mr. House suggested a limitation be imposed on this business, similar to Poe's Tavern, of a closing time of 10:00 P.M. to discourage late night activities that would disturb the surrounding residential neighborhoods.

Mr. Steffey read the second departmental comment from Robert Pugh, Interim Fire Chief at Wrightsville Beach Fire Department. Mr. Pugh's first question asked about the extent of the interior modifications. The second question concerned the intent to use the upstairs portion of the building, and if so would they be structurally reinforcing it.

Mr. Steffey read the 2005 CAMA Land Use Plan Statement of Consistency; the proposed development appears to be consistent with Policy 9.1.A.5. Mr. Steffey said that based on this information the Planning Staff offers a favorable recommendation of the CUP request, as submitted by the applicant, so long as a

Parking Exception is granted by the Board of Aldermen. He said Staff also recommends that the hours of operation be limited to midnight and asks the Planning Board to consider placing restrictions on delivery times during congested summer months. Mr. Steffey informed the Board of the Public Notices.

Mr. Steffey continued his presentation and provided additional recommendations with a list of conditions. The first condition stated that if the property owner receives two or more citations for noise violations during a twelve-month period, their permit would be subject to review and revocation by the Board of Aldermen. Additional conditions stated that the applicant must comply with all Town Codes, Ordinances as well as the orders and directives of the New Hanover County Fire Marshall. He also stated that the development would be required to meet all provisions of FEMA 50% Rule, and that the applicant must obtain all necessary state and local permits. Staff also recommended that hours of operation be limited to midnight, and that all deliveries should be scheduled at times that will minimize impacts to the normal flow of traffic. He stated the Parking Exception should include a condition that it becomes null and void if the business becomes a private club.

Mr. Steffey asked the Planning Board if they had any questions. Ms. Janice Clark asked if the wiring has been redone. Mr. Tony Wilson replied that all the wiring is going to be replaced. Ms. Zeke Partin asked why the staff recommended the business be allowed to stay open until midnight versus 10:00 P.M. like Poe's Tavern. Mr. Steffey said that Poe's Tavern is also allowed to stay open until midnight, but all outdoor food and beverage service must end at 10:00 P.M. He recommended that a similar rule be considered for this business.

#### PRESENTATION BY AUTHORIZED AGENT ON BEHALF OF THE APPLICANT:

Mr. Joseph Taylor Jr. Esq., authorized agent for the applicant, introduced the members of the development team and owners who were present at the Planning Board Meeting. Mr. Taylor presented to Staff and the Planning Board a handout consisting of four key reasons the project should be approved, and the nine Standards that the proposed restaurant would have to satisfy to be eligible for a Conditional Use Permit. Mr. Taylor read through each of his talking points and expanded upon them based on his personal experience of being a resident of the North End of Wrightsville Beach, a former member of the Board of Aldermen, and former Police Commissioner. (Please see attachment A and B for the talking points and new floor plan that were submitted by Mr. Joe Taylor)

## PRESENTATION BY DEVELOPMENT TEAM

Mr. Cameron Zurbruegg, 6 Crane Street, a Commercial Property Real Estate Developer representing Coastal NC Real Estate II, and a Wrightsville Beach resident stated that he is a consultant to the owner. He stated that the building at 13 East Salisbury Street is 75 years old, has undergone four additions over the years, and is in need of repair and renovations for safety reasons. He said the upstairs seating area is structurally unsafe and the property is a hazard on both levels as it is right now. He said the new owner desires to make the entire building structurally sound. He said they plan to make the ground level ready for immediate use and wait until year two to open the upper level. He said owners plan to make the following immediate improvements: new electrical system, new heating and air conditioning system, new ground level windows and doors, and new ground level sheet rock and flooring. He said the existing kitchen will also be upgraded to code. He stated that because of the 50% rule the main priority will be to renovate the building for safety, structurally and mechanically soundness, and cleanliness. He informed the board who will be hired to work on the building, and pointed out their connection to Wrightsville Beach.

David Lisle, Architect with Lisle Architectural & Design at 614 Market St. stated that he will be working with the Town and development team to make the building safe and help the team work through the first stage of renovations. He asked the Board for questions. Ms. Susan Snider asked if the 93 person occupancy included the upper floor seating area. Mr. Lisle said the occupancy did include both floors and that the upper floor would not be used until after the next stage of renovations. Mr. Cofer asked if the next stage would follow a reappraisal after the next calendar year. Mr. Lisle said that was correct and the next stage would begin after one year. Ms. Partin asked how extensively the kitchen needed to be repaired. Mr. Lisle said that some of the kitchen would not need to be replaced and could be reused after cleaning.

Danny McPherson of 6019 Paddy Circle, prospective co-tenant/owner of proposed restaurant with his brother submitted a new floor plan to the Board. He proposed an occupancy of approximately 50 on the bottom floor. He said there will not be as much seating on the second floor due to the stairwell. He gave the Board an overview of their menu plans and the focus on local, southern, family fare. He said that he is not interested in running a late night bar and plans to close the restaurant at 10:00 P.M. He asked the board to allow for a 12:00 A.M. Midnight closing time to allow employees to clean-up after closing. Mr. McPherson asked the board for questions. Mr. Jim Smith asked about the closing

time. Mr. McPherson said he plans to have a last seating at 9:30 P.M. but does not want to turn away customers if they come a little late. He also said the staff needs time after closing to clean-up. He said they plan to be open seven days a week during tourist season; and that these hours may change during the off-season.

#### PRESENTATION BY AUTHORIZED AGENT ON BEHALF OF THE APPLICANT:

Mr. Joseph Taylor Jr. Esq., authorized agent for the applicant, said that this restaurant complies with the criteria of the Parking Exception requirements (as amended). He stated that it is impossible to find any additional parking, the area has a high amount of pedestrian traffic, and this will not impair public safety. He said this building has historically been a restaurant and will restart development in this area of Town. He said this use is consistent with the Town's CAMA Land Use Plan. He asked that the Board recommend a 27 space Parking Exception. He asked the Board to reconsider the first condition of "two or more citations for noise violations", and change it to "convictions for noise violations". He said that the restaurant will not have any outdoor music, and a noise complaint could be mistakenly attributed to the restaurant. The Planning Board held general discussion on the verbage of noise citations versus noise convictions.

#### PUBLIC HEARING:

Chairman Dull opened the public hearing on the proposed Conditional Use Permit and Parking Exception for 13 East Asheville Street

#### IN FAVOR:

Ms. Kelly Barnett of 107 Parmele, spoke on behalf of her neighborhood. She stated she has been a Wrightsville Beach resident for 15 years and has seen a growth of full time family residents in her neighborhood. She said that she supports positive growth like family friendly restaurants in the area. She said this would provide a social, positive, community gathering place and would allow for easy biking and walking access from the North End neighborhoods.

Mr. Hayes Perry of 6370 Inland Greens, spoke on behalf of his neighborhood. He said that he has lived in the area for many years and would love to have the option to walk across the street to a family restaurant. He said it would be a wonderful improvement to the neighborhood. He said he has witnessed many businesses come and go in the area, and he believes this restaurant would be a

move in the right direction for this neighborhood.

Ms. Sue Bullock spoke on behalf of the Chamber of Commerce. She said that she remembers the many restaurants that have come and gone in the area and believes this proposed restaurant will be a good beginning to the refurbishing of Salisbury Street. She said she understands the concern for traffic, but said because of the lack of restaurants in the area, she believes the neighborhood can handle this addition.

OPPOSED:

No members of the audience spoke in opposition.

Chairman Dull closed the Public Hearing portion of the meeting.

PLANNING BOARD DISCUSSION:

Mr. Ace Cofer said he was happy to see the additional condition on the Parking Exception that states the Exception will be null and void if the restaurant changes its use to a bar. Mr. Jim Smith agreed.

Ms. Susan Snider asked if the Board agreed to change the Parking Exception condition that states the Exception could be revoked if the owner receives "two or more citations", to "two or more convictions". Mr. Jim Smith said he thinks the wording should remain. Ms. Snider asked if the Board should raise the allowable number of citations. The Board discussed the possibility of false reports, and Mr. Ace Cofer said that typically the police must observe the noise violation in order to issue a citation. The Board discussed that this would not eliminate false reports, but would avoid a citation being issued mistakenly. Mr. Wilson stated that Poe's Tavern has the same condition of "two or more citations". The Board agreed the condition should stay consistent with Poe's Tavern.

Mr. Jim Smith asked the potential restaurant operators for clarification on walk-up windows for ordering food. Mr. McPherson stated that there will be take-out available, but not through a window. Mr. Smith also asked for clarification on the off-season hours. Mr. McPherson said that his other restaurant, King Neptune, experiences a need to close during the off-season, but he believes this end of Wrightsville Beach has a better chance for year-round customers.

The Board discussed the potential improvement for the neighborhood, the possible appraised value of the property, and the possible noise issues in

regards to disposing of bottles and trash.

**MOTION:**

**...Motion by Ms. Partin to offer a favorable recommendation of the Conditional Use Permit and a Parking Exception for 13 East Salisbury Street. Motion seconded by Ms. Clark and carried unanimously by a vote of (7-0).**

**OLD BUSINESS**

None at this time.

**OTHER BUSINESS FROM CHAIRPERSON OR BOARD MEMBERS**

None at this time.

**OTHER BUSINESS FROM STAFF**

None at this time.

**ADJOURNMENT**

**...There being no further business to come before the board, Chairman Ken Dull made a motion to adjourn which was seconded by Ms. Clark, the meeting was adjourned by unanimous vote at 7:18 p.m. Vote (7-0)**

**ATTACHMENTS:**

- A. Talking points from Mr. Joe Taylor
- B. Revised floor plans submitted by Mr. Joe Taylor

Respectfully Submitted,



Danielle Villegas, Administrative Assistant (*Temp Position*)

CONDITIONAL USE PERMIT APPLICATION FOR  
PROPOSED RESTAURANT AT 13 EAST SALISBURY STREET

*Presentation for the Wrightsville Beach Planning Board  
May 3, 2016*

**Introduction**

Good evening Chairman Dull and members of the Planning Board. I am Joe Taylor, an attorney with Murchison, Taylor and Gibson, PLLC. I am here tonight with my Associate Andi Matt on behalf of our client, Coastal NC Real Estate II, LLC, the owner of the commercial property at 13 East Salisbury Street and the applicant for the conditional use permit for that property, which Mr. Steffey has just presented to you. The owner's sole member, Tom Kievit; its development consultant, Cameron Zurbruegg of Hendon Properties; its architect, David Lisle of Lisle Architecture; as well as Danny and Earl McPherson, the two brothers and partners who will operate the restaurant proposed at the site, are here tonight to present our required evidence entitling us to the requested Conditional Use Permit. You will hear from most of them shortly, but I first want to take a few minutes to briefly summarize four key reasons why this project should be approved.

**First**, I cannot emphasize enough the importance to this community of attractive and successful commercial establishments catering to both locals and visitors. The proposed restaurant will strike a perfect balance between the need to provide such amenities to encourage investment in the Town and increase property values, on one hand, and the desire to preserve the smaller-town feel of Wrightsville Beach, on the other.

**Second**, the subject property has a truly unique location in an established commercial zone adjacent to one of only two commercial fishing piers in the Town – Johnny Mercer's Fishing Pier – and a popular beach access point with a relatively large number of public parking spaces available. However, the area has been in need of orderly, responsible development for years. There is also a significant need and desire for amenities that better serve those of us, myself included, who live or vacation in one of the many homes on the North end of the beach, from Johnny Mercer's Pier to Mason's Inlet; currently, other than the snacks available in the Pier House at Johnny Mercer's Fishing Pier, the only full-service, year-round restaurants within a reasonable walking or biking distance of these homes are located within a resort or private club. This area therefore has the potential to be a thriving commercial center providing valuable amenities for the Town. The proposed restaurant at 13 East Salisbury Street is the first step in finally realizing that potential.

The **Third** reason is related to the first two, but is significant enough to list separately. Until recently, the property at 13 East Salisbury Street was operated not as a restaurant but as a bar (technically, a Private Club serving alcohol) known as Buddy's Crab Shack & Oyster Bar. Like most bars, Buddy's attracted noisy late night partiers and played amplified music often until closing at 2:00 am, so it was not very popular with its neighbors. In fact, the Town's Police Chief, Dan House, noted that over the last five years, the Police Department has received a total of **178 complaints** in reference to Buddy's relating to noise and alcohol issues. The applicant, as the new property owner, recognizes and we agree that continuing to operate a bar like Buddy's is not the best use of this particular property and is not in the best interests of the surrounding property owners or the Town overall. If approved, the restaurant (to be called "**The Shore Shack**") will serve breakfast, lunch and dinner to locals and visitors of all ages and will close before midnight every day throughout the year. As such, the proposed restaurant will differ from and be an all-around improvement from the site's former use, not only by avoiding the noise and alcohol problems associated with a bar but also by enhancing the overall appearance and atmosphere of this area.

**Fourth**, similarly, this project will improve the safety and appearance of the property and, as a result, the surrounding area. The upstairs seating area and entire second floor of the existing building has been determined by the Town to be structurally unsafe such that only the ground floor has been used in recent years. If the Conditional Use Permit is approved, the applicant will make structural, electrical and other improvements necessary to make both levels of the building safe, secure and aesthetically pleasing.

**Fifth** and finally, a standard restaurant is not permitted as a matter of right anywhere on Wrightsville Beach. Generally, then, all existing restaurants on Wrightsville Beach have been approved by the Town and permitted as conditional uses within their particular zoning districts. We are seeking that same approval and permission, and there is no location in the Town more appropriate than 13 East Salisbury Street for a standard restaurant like The Shore Shack, particularly considering that a restaurant is one of the property's principal historic uses. Further, allowing The Shore Shack to operate at the site is consistent with the CAMA land use plan.

Following our presentation tonight, it will be clear that the proposed restaurant is not only a great fit and fantastic opportunity for growth in Wrightsville Beach, but also that it satisfies the nine legal requirements for issuance of a conditional use permit set out in §155.4.5.4 (E) of the Town Code.

## **Legal Standards**

Under applicable law, a conditional use permit shall be approved if all nine of the standards set out in §155.4.5.4 (E) of the Town Code are satisfied. The proposed restaurant will satisfy each of those standards, as follows:

- 1) The establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, or general welfare.**

In fact, approval of the proposed restaurant will benefit the public health, safety and general welfare. Until recently, the structure had been operated primarily as a bar (technically, a Private Club) known as Buddy's Crab House & Oyster Bar for many years. The site is located in an established commercial district and the previous owner received all necessary permits and approvals for its use as a bar, but the noise, violence and other issues that were at times associated with that use proved not to be conducive to the establishment of a thriving pedestrian-centered commercial zone that attracts locals and visitors of all ages throughout the year, which is the type of environment we desperately want to see grow in this truly unique segment of the Beach. The proposed restaurant will alleviate the problems associated with Buddy's and similar establishments because, instead of an often rowdy bar open until 2:00 am, it will be transformed into an attractive, full-service, sit-down restaurant that will be open year-round and will close by midnight every day. The restaurant will target beachgoers and other customers of all ages, not late-night bar-hoppers and party-goers.

Further, The Shore Shack will fulfill a genuine need for residents and visitors in the area from Johnny Mercer's Pier north to Mason's Inlet. Other than restaurants inside Holiday Inn and Shell Island resorts and the snacks available in the Pier House at Johnny Mercer's Fishing Pier, the proposed restaurant will be the only full-service, sit-down restaurant open to the public within a reasonably close walking and/or biking distance to those residents and visitors on the North end. The restaurant will of course also be required to comply with all applicable ordinances and laws, including applicable CAMA, FEMA and stormwater rules and regulations.

- 2) 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.**

For many of the same reasons already noted with regard to the first requirement, above, the restaurant will improve rather than diminish the use, enjoyment and/or value of surrounding properties, which include primarily permanent residences, vacation or other short-term rentals, and some commercial properties in the area adjacent to Johnnie Mercer's Fishing Pier. This project will greatly enhance the aesthetics of the area, as the initial exterior clean-up efforts at the site have already done. It will also satisfy the clear and long-standing need for dining options in this part of Wrightsville Beach. Furthermore, if approved, the restaurant will be operated by two brothers, Danny and Earl McPherson. The McPhersons have already shown their ability to reinvigorate local businesses by their purchase and transformation of King Neptune's, a popular restaurant and bar located in the Town's central business district.

These features will increase property values and encourage greater investment in the immediate vicinity of the site and the Town overall.

- 3) 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.**

The site is located in a unique commercial zone adjacent to one of the two commercial fishing piers in the Town and one of its most popular public beach access points. The proposed restaurant will not require significant changes to the exterior of the existing structure and all modifications anticipated will be in harmony with existing and anticipated uses in the immediate vicinity. And, again, the use of the site as a full-service, year-round restaurant rather than its prior use as a bar will enhance the aesthetics and facilitate rather than impede the orderly development of the Town.

- 4) **The exterior architectural appeal and functional plan or 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, as to cause a substantial depreciation in the property values within the neighborhood.**

As noted, other than efforts to clean up the existing appearance of the structure and landscaping at the site, very little change to its exterior is proposed. As such, the restaurant will not be at variance with the exterior appeal and/or functional plan of the existing or proposed structures in the area around Johnnie Mercer's Fishing Pier and will improve rather than detract from the aesthetics of that area. It will be in line with and contribute to the orderly commercial development of the beachfront, one of the Town's most valuable resources.

- 5) **Adequate utilities, access roads, parking, drainage and necessary facilities have been or are being provided.**

All required utilities, access roads, drainage and necessary facilities already exist or will be provided at the site.

The existing structure does not leave room on the lot for parking spaces, so we have requested an exception from the off-street parking requirements as provided under § 155.9.1.6 of the Town's Code of Ordinances. Such an exception is warranted for the proposed site based on the criteria set out in that section. Not only does the existing building and surrounding properties make it unfeasible for our client to acquire additional land to provide off-street parking spaces, but any detrimental impact of allowing this exception is greatly alleviated by the availability of public parking in the immediate vicinity (along both sides of Salisbury Street as well as North Lumina Avenue and nearby side streets) and the likelihood that many of the restaurant's patrons will often be traveling on foot or bicycle rather than by car.

**6) Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.**

Approval of the proposed conditional use will not significantly increase vehicular traffic congestion and no change in ingress and egress from the previously permitted use of the site is requested. Particularly in the Spring through Fall months, much of the ingress and egress will be on foot or by bicycle. The site also fronts a public street that contains over 100 public parking spaces.

**7) The conditional use shall, in all other respects, conform to all the applicable regulations of the district in which it is located.**

Aside from the parking requirements, as discussed previously, the proposed use will conform to and with all applicable standards of the C-2 district, as demonstrated by the Site Plan and information contained in our application that Mr. Steffey summarized for you. Mr. Zurbruegg, Mr. Lisle and Mr. McPherson will be able to answer specific questions you may have regarding these regulations.

**8) 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 proposed use will not restrict or decrease the amount or quality of public access and parking that currently exists and that has existed for many years during which the site was operated as a bar and, before that, as a restaurant.

**9) The proposed use will be consistent with the recommendations and policy statements as described in the adopted Land Use Plan.**

The restaurant as proposed will coincide with and further a number of the express policies and objectives adopted by the Town, particularly in that it will make more efficient and orderly use of an existing structure previously occupied by a less attractive and often problematic use (a bar). Specifically, for example, the proposed restaurant will further Policy 9.1.A.1, encouraging appropriate neighborhood oriented businesses, and Policy 9.1.A.5, Commercial Development, encouraging year-round commercial establishments, specifically including sit-down restaurants, such as the one we have proposed.

