

Town of Oriental – Continued Public Hearing/  
Board of Commissioners Meeting  
December 4, 2006

The Oriental Town Board of Commissioners met on Monday, December 4 at 5:30 pm at the First Baptist Church Fellowship Hall. Present were Mayor Styron, Commissioners Bohmert, Herlands, Inger, Johnson, and Venturi. Over 50 members of the public were in attendance.

Mayor Styron opened the continued public hearing and led the Pledge of Allegiance.

The public hearing for the Whittaker Creek Marina condo project then proceeded. Mr. Barnett, Pamlico County Fire Marshal, reviewed the updated plans submitted by Mr. Bysheim. He questioned the material to be used on the non-paved portion of the designated fire lane. Mr. Bysheim replied that whatever gravel is acceptable will be used. Mr. Barnett cautioned him to make sure the material will withstand heavy rescue vehicles and also requested that the proposed paved 20' drive leading to the fire lane be widened to allow more room for the fire trucks to maneuver.

Mr. Barnett and the Board discussed the safety aspects of the project, with Mr. Barnett's conclusion that the proposed project would reduce the safety of persons and property should a fire occur.

Those people wishing to speak were sworn in.

- 1) Madeline Sutter attempted to submit evidence on behalf of someone else. This evidence was rejected.
- 2) John Vinci submitted a letter (on file, Exhibit #1 dated 12/4/06) stating the WCYOA's position should they lose the grandfather clause pertaining to parking.
- 3) Judy Smith submitted more evidence (on file, Exhibit #2 and #2a, dated 12/4/06) concerning a meeting with Mr. Steven Lane of CAMA and, more evidence on the parking issue.
- 4) George Smith submitted evidence (on file, Exhibit #3 dated 12/4/06) concerning parking.
- 5) Ralph Schaar (618 Windward Drive) attempted to speak on behalf of other members of the SPVFD but was restricted to voicing his own opinion on dealing with fires at the proposed condos. He stated that in order to fight a fire, "you need to ventilate so the ladder needs to be able to reach the second floor so that holes can be made in the walls at the second floor and a bigger hole needs to be made for the hoses and to ventilate the third floor."
- 6) Maureen Anderson submitted another letter (on file, Exhibit #4, dated 12/4/06).
- 7) Linda Kapica submitted evidence (on file, Exhibit #5 and #6, dated 12/4/06) stating that the project is in violation of required setbacks as they pertain to height of the building.

Commissioner Bohmert made a motion to close the public hearing. Second by Commissioner Johnson. Vote 5-0.

The commissioners then addressed the seven elements

**1. Is the requested SUP within the jurisdiction of the Board of Commissioners?**

Commissioner Herlands made a motion that the SUP is within the jurisdiction of the Board of Commissioners. Second by Commissioner Johnson. Vote 5-0.

**2. Is the application complete?**

Commissioner Johnson asked: What does complete mean? Just fill in all the blanks? What if it's the wrong application? Even if the application submitted is complete, what if it's the incorrect one? For example, maybe it should have been a subdivision application?

Attorney Scott Davis replied: Complete means that all the information that is required by the application is supplied. It doesn't mean that the information supplied meets the requirements of the GMO but that the application is complete.

Commissioner Venturi: The definition of complete is, is there enough information here in front of us to reach a decision.

Commissioner Inger: We have areas where we have questions about the width and the amount of setbacks and the width of the cul-de-sac.

Commissioner Bohmert: What we're doing is, can he put condos on that piece of property; this has nothing to do with the building plans?

(Attorney Davis confirmed this)

Commissioner Johnson made a motion stating that the application is complete. Second by Commissioner Bohmert. Vote 4-1 with Commissioner Inger voting no.

**3. Does the development comply with the GMO?**

Commissioner Johnson: I have a list but if someone else wants to go first.

Commissioner Herlands: I find that the project does not meet the requirements of the GMO Section 160, paragraph 3, Setback Requirements. And it does not comply with Section 124 regarding parking.

Commissioner Johnson: Well, Section 71 12a of the Subdivision Ordinance states any tract of land greater than 2 acres that will be divided into 2+ lots requires a subdivision application. Our GMO also specifies in Section 71 4d that we do not have to provide permits to illegally or non subdivided property. In other words, a subdivision application should have gone in first.

Attorney Davis: The SUP can be conditioned upon obtaining a valid subdivision permit.

Commissioner Johnson: What about GMO Section 58 2c? I don't believe the subdivision ordinance could be met as proposed.

Commissioner Herlands: I would add Section 196 to the list of sections of the GMO that I do not think he complies with. So that includes Sections 160, 124, 126 and 196.

Commissioner Herlands made a motion that the development, if completed as proposed in the application, will not comply with GMO 160(3), Setback Requirements. As supporting findings of fact: Section 160(3) requires a parking area or other impervious

surface in an MU district to be set back 7 feet from any R-1 lot. Property adjoining the proposed development is owned by Stanley J. Kapica. The Kapica lot is in an R-1 development district. The December 6, 2006 revised plat entered into evidence by the applicant shows a setback between the proposed paved designated fire lane at the northwestern edge of the development and the R-1 lot owned by Stanley C. Kapica of less than the required 7 feet.

Further, we find that the development, if completed as proposed in the application, will not comply with GMO §124 Extension or Enlargement of Nonconforming Situations. As supporting findings of fact: Evidence submitted reflects that the Whittaker Creek Yacht Harbor services in excess of 130 boat slips at the marina. Under the §196, the minimum number of parking spaces required for the slips would be 65, and 15 more would be required for the uses of the other buildings at the marina (the ship's store among them), were the situation not a nonconforming situation in existence at the time the applicable sections of the GMO were adopted. The applicant testified that he currently provides approximately 30 parking spaces at the marina complex. Evidence submitted showed that some of the property subject to this application has in the past been expressly set aside for parking for marina complex operations, and has been used for parking as recently as November 2006 despite testimony from the applicant that this area has never been used for parking. The Whittaker Creek Yacht Harbor operation is currently a nonconforming situation with respect to parking and the development of the property as proposed in the application would result in greater nonconformity with respect to parking requirements by eliminating current parking opportunities.

Further, that we find that the development, if completed as proposed in the application, will not comply with GMO § 126, Change in Use of Property Where a Nonconforming Situation Exists. As supporting findings of fact: Under §126, the Applicant is required to bring the existing nonconforming parking situation into conformity in order to receive approval. The Special Use Application reflects a substantial change in use as the use of the property is changing from marina operations and boat sales and service operations to include multi-unit residences, which is in a third principal use category. Evidence submitted reflects that the Whittaker Creek Yacht Harbor services in excess of 130 boat slips at the marina. Under §196, the minimum number of parking spaces required for the slips would be 65, and 15 more would be required for the uses of the other buildings at the marina (the ship's store among them), were the situation not a nonconforming situation in existence at the time the applicable sections of the GMO were adopted. The Applicant testified orally that he currently provides approximately 30 parking spaces at the marina complex. The applicant orally testified that he is not proposing any additional parking in the marina complex to bring it into compliance.

Further, we find that the development, if completed as proposed in the application, will not comply with GMO §196, Parking Spaces. As supporting findings of fact: Section 196 requires that developments provide a sufficient number of parking spaces to accommodate

the number of vehicles that ordinarily are likely to be attracted to the development. The regulation presumes that under normal circumstances, adequate parking for multi-unit dwellings will be comprised of 2 spaces for each dwelling unit. Although the proposal designates 24 spaces, 9 of the spaces may be blocked by users of another 9 other spaces, which may result in the blocked 9 being unavailable for anyone's use. In addition, the dimensions of the parking area for the development reflect limited parking area for other cars for residents, guests, or deliveries. For example, at one point the parking area is only approximately 17 feet wide immediately adjoining a sharply angled group of piggy back spaces. Also, the Applicant proposes on the December 4 plat that approximately 3,200 square feet on the property will be paved but blocked off from the users of the residences, being an access only to the use of the Whittaker Creek Yacht Harbor, further limiting on site parking opportunities. Limited on-street parking will be available, since the development is proposed to be situated at the end of a cul-de-sac and does not have any other border on a public right-of-way. These are all unusual factual situations that limit the likelihood that the minimum presumptive parking space requirement will meet the ordinary parking needs at the development. The applicant submitted a letter to the Town Board into evidence that stated that the Whittaker Creek Yacht Harbor will likely be used for additional parking needs for the proposed development. Residents of the neighboring area testified that insufficient parking for existing users of the Whittaker Creek Yacht Harbor, which is already in a nonconforming situation for parking, leads to parking and traffic congestion on Whittaker Point Road. The proposed development is also taking place on land that has been designated as, and used as, parking for other activities at the marina. Therefore, the development will exacerbate the parking problems at the Whittaker Creek Yacht Harbor, putting further pressure on available parking places at the proposed development, rather than alleviating parking pressure as the applicant suggested.

Second by Commissioner Venturi. Vote 5-0.

**4. Will the development materially endanger the public health or safety?**

Commissioner Johnson: Well I think in regards to emergency vehicle access to the marina, especially to the fuel dock, Mr. Barnett stated that this could be a problem. You not only have the boats in the slips, there are fuel tanks there and if the parking places are being used, I see a major problem. And I'm also concerned about, should the residents on Whittaker Point Road decide they might now want no parking on the right of way at their residences, where will the people park? If they end up parking on the road, you've got bikers, walkers, you might have kids, it might be dark, I think it could be dangerous....

Commissioner Venturi: I feel that the local fire department feels the size of their vehicles in that confined space could be problematic especially if parking creates a bottleneck, it would be a potentially disastrous situation. A boat could become a "floating incendiary device," most of which have propane tanks on them, gasoline...if any boat, with the wind blowing the wrong way, were to catch fire the whole area could go up...

Commissioner Johnson made a motion that the development will endanger the public health and safety. Second by Commissioner Inger.

Commissioner Herlands: I'm not completely comfortable with this; are we talking about the health and safety of any condo project that happens to be built there...

Commissioner Johnson: No.

Commissioner Venturi:... if that 20' street is the only way they have for emergency vehicles to be able to get access to the condos or beyond the condos,

- a) Lack of sufficient parking causes the overflow to park on the streets impairing traffic flow and making it dangerous for pedestrians and cyclists;
- b) Limited space makes it difficult for rescue vehicles to get to all areas of the complex.

Vote 5-0 in favor of Commissioner Johnson's motion that the development will endanger public health and safety.

**5. Will the development substantially injure the value of adjoining or abutting property?**

Commissioner Venturi made a motion that the development will not injure the value of adjoining or abutting property. Second by Commissioner Herlands. Vote 4-1 with Commissioner Inger voting no.

**6. Will the development be in harmony with the existing development and uses within the area in which it is located?**

Commissioner Herlands made a motion that the development, if completed as proposed in the application, will not be in harmony with existing development and uses within the area in which it is to be located. As supporting findings of fact: Evidence submitted reflects that the building will be much larger, both taller and bulkier, than any building in the MU district in which is located, where other buildings are only one story. Evidence was also submitted by oral testimony that all nearby residences in the single-family residential neighborhood on which the development would border have one-half acre lots with at most two-story homes set back at least 30 feet from the road. Several members of the local neighborhood testified orally, and many others stood when asked if they concurred, that the proposed development would not be in harmony with the neighborhood. Tonight, when confronted with information that his proposed building violated the height requirements in the GMO, the applicant withdrew his proposed building's drawings and asked us to consider, rather the building he had proposed, a 12-unit building of maximum height and size that he could legally put on that same footprint. Such a building, like the one he had proposed, would be unique in both its development district and the adjoining one.

Second by Commissioner Johnson. Vote 4-1 with Commissioner Bohmert voting no.

**7. Will the development be in general conformity with any plans officially adopted by the Town Commissioners?**

Commissioner Herlands made a motion that the development is in general conformity. Second by Commissioner Bohmert. Vote 5-0.

Commissioner Herlands made a motion to deny the special use permit for the reasons determined by the Town Board as evidenced by its preceding votes. Second by Commissioner Bohmert. Vote 5-0.

Commissioner Bohmert made a motion to adjourn. Second by Commissioner Venturi. Vote 5-0.

Meeting adjourned at 8:45 pm.

---

Mayor

---

Town Manager