

Large Residential Structures Report

Background

Residential structures that are significantly larger than homes in the rest of the community have been an issue for municipalities along the eastern seaboard and destination areas around the country for several years. Traditional zoning codes were not written to address these structures. Very large residential structures, which are rented to groups, lend themselves to events such as wedding receptions, retreats, and other uses and not typically associated with single-family vacation rental homes.

The Planning and Zoning Board has been looking at the issues surrounding large structures since problems arose with homes being advertised as wedding venues in 2014. In August 2016 the Board of Commissioners directed the Planning and Zoning Board to:

- **Look at the problems associated with very large structures**
- **Identify the “holes” in our ordinances that would allow very large structures to be built**
- **Look at what other Towns are doing**
- **Present a range of possible solutions.**

Problems and Concerns

The Planning and Zoning Board has identified the following issues with large structures that impact property and public safety.

Density

Larger homes concentrate more people in a smaller area. Events exacerbate the problem. Besides other issues, dune destruction has been seen.

Noise

This issue appears to have been resolved by the new noise ordinance, but larger homes require more enforcement. Events exacerbate the problem.

Parking Issues

Homes with a large number of bedrooms require more off-street parking for safety reasons. Events exacerbate the problem.

Trash

Large numbers of guests generate large amounts of trash, resulting in the need for many roll-off cans. This can be unsightly. Homes without the appropriate number of cans risk the spreading of refuse throughout the neighborhood.

Safety

- Fire

- Evacuations
- Police

Carrying Capacity of Island

Large structures were not anticipated and as the island continues to build out could impact infrastructure. Note: The Land Use Plan¹ uses 6.5 (high) and 4.5 (low) people per rental cottage; this figure seems very outdated.

Water: The need for a second water tower is under discussion.

Sewer: It is unclear what the capacity of our sewer system is, but at the time it was designed very large homes were not anticipated.

Current Restrictions²

CAMA Setbacks on Oceanfront

Erosion rates vary on the island and are set by the State. Setbacks are measured from the first line of stable natural vegetation (FLSNV) and are based on the erosion rate, with a minimum erosion rate of 2', which covers the majority of the island. Structures up to 5000sf are allowed with a 60' setback. Properties with more than 120' of setback can have structures up to 10,000sf and with 130' of setback structures can be up to 20,000sf.³

Structure Size (sf)	Setback (ft)
< 5000	60
<10,000	120
<20,000	130
<40,000	140

It is unclear what the impact of the Central Reach project will be, which is expected to advance the shoreline 60-80' oceanward. A Static Vegetation Line will be required by the Coastal Resources Commission (CRC) prior to construction of this project. After completion of the project it is anticipated that the Town will convert the Static Vegetation Line to a Development Line. It is unclear where that line will be set and what the impact will be on setbacks for new/renovated structures.

CAMA Setbacks on Canal and ICW Lots

Canal and ICW lots also have setbacks. Most canal lots have a 30' rear setback as determined by the CAMA officer. ICW lots also have setbacks based on wetlands.

Height Limits

The Town of Holden Beach has strict height limits. For most of the island, structures may be 31' above BFE plus 2'. The actual height of the structure above the ground is based on the flood elevation. Details are available in Town of Holden Beach Ordinance 15-01.⁴

Lot Coverage and Setbacks

As part of our storm water control, impervious surfaces of structures are allowed to cover 30% of a lot. Structures must be setback from property lines on all sides.

Parking Requirements

Parking requirements are based on the number of bedrooms.

Ordinance Holes which would allow Large Structures to be Built

After examination, we have identified several instances where our current ordinances potentially allow very large structures to be built. Many areas of the island would have minimal restrictions and large structures could be built.

Combining of Lots

Current ordinances and state laws allow for lots to be combined. This process creates a larger building envelope. This is an issue island wide.

Residential Homes in Areas Zoned Commercial

Our current zoning allows residential structures in areas zoned as commercial. While some restrictions such the height limit and CAMA restrictions remain the same, other setbacks and limits are removed or reduced.

Oceanfront with Greater Than 120' Setback

Parts of the oceanfront have distances greater than 120' from the FLSNV and structures over 5000sf could be built on these lots. The CAMA officer determines the FLSNV on each lot. Figure 1 shows the most recent photos from Google Earth (October 2014) with a 120' line drawn at a house across from Sand Dollar for reference only. Figure 1 would not show erosion from Hurricane Matthew or Tropical Storm Ana, but would also not show the impact from the Central Reach Project. The implication is that a large portion of the oceanfront could have homes greater than 5000sf.

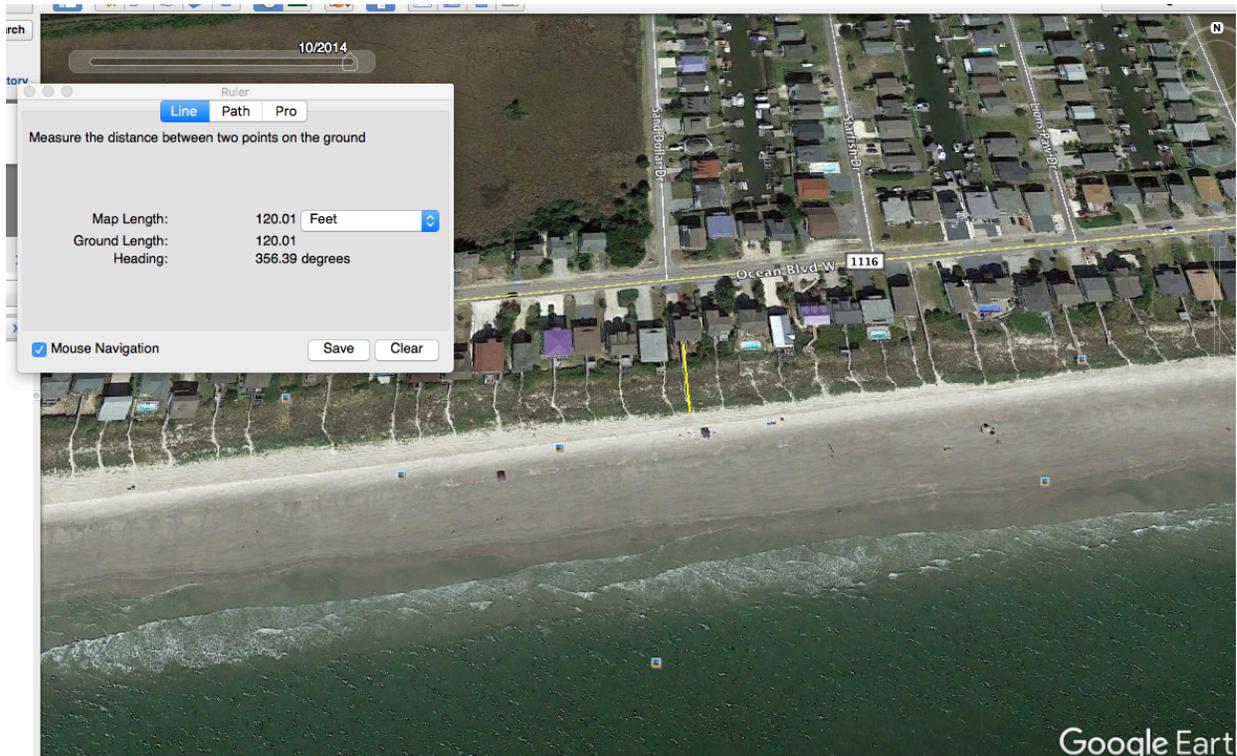


Figure 1 October 2014 aerial view showing a hypothetical 120' setback at OBW and Sand Dollar. For reference only.

What Are Other Communities Doing?

Many oceanfront communities in NC are grappling with this issue. The situation became more complex with the passage of “Senate Bill 25”⁵ which limited the way communities could restrict structures.

The Planning and Zoning Board did a review of NC communities focusing on neighboring beaches and areas that have been in the news. We found that every community is different and addresses the issue in unique ways. Here are some conclusions:

- This is a pervasive issue along the coast
- Whether a community has sewer or septic systems plays a role in development
- Larger lots – 75’ seems more the norm
- The shining of lights onto other properties, or “light trespass” and light pollution, in general, is more of a concern in other communities than we have seen here

Oak Island, Brunswick County

- Has a 5000sf limit on residential structures and added a conditional use provision for houses over 4000sf. Ordinance is based on conditioned space and does not include decks.
- Increased parking requirements to a minimum of two off-street spots plus an additional spot for each “habitable room” per the state’s definition.
- Will be setting maximum occupancy at 14 people to be implemented with their Unified Development Ordinance (UDO) for new structures.

- Using code enforcement for homes with repeated problems. Restricting renting for one year after three violations of any kind (noise, high grass, trash, etc.) in a calendar year.
- Requiring an Event Permit for weddings on beach strand or elsewhere on the island.
- Each rental home needs a Vacation Rental Permit.

Caswell Beach, Brunswick County

- Lot coverage is maximum of 20%
- Structure may be up to 5400sf, but still must meet 20% rule⁶

Ocean Isle, Brunswick County

- Modified their ordinances to remove reference to number of bedrooms, it is now “reserved”.
- Formerly, the number of bedrooms was based on lot size and/or frontage.

Sunset Beach, Brunswick County

- Uses a Unified Development Ordinance (UDO) and Planned Residential Development (PRD).
- Developments requires 35% open space (non-wetlands) in addition to lot coverage restrictions

Currituck County (Corolla, Carova)

- Have been trying to set limits, but have also found that the use of the home is the issue
- Currently use additional requirements if greater than 5000sf
- Going to the legislature for special legislation to control size
- Regulates beach areas differently than mainland areas because issues are different

Duck, Dare County

- Town is on septic systems and larger lots are required.
- Structure size limits based on lot size (75’w minimum), larger setbacks, 30% coverage, parking requirements and height limits.⁷
- Currently removing rules on number of bedrooms due to SB25.

Isle of Palms, SC

- Limits the number of bedrooms, maximum occupancy, and maximum number of vehicles
- Limits occupancy to two people per bedroom plus an additional two people

Cape May, NJ

- Caps occupancy at 24 people
- Created a new zoning district for “Resort Houses”, which must be in the Hotel/Motel District.

Possible Solutions

The Board of Commissioners has asked P&Z to present a range of solutions for their consideration. In an effort to save legal fees the Town Attorney has not reviewed the list below.

Maintain Status Quo

Continue to issue Notice of Violation (NOV)⁸ to owners who are using homes for assembly occupancy, such as wedding receptions. The Building Inspector is granted this authority by the State. This has been effective to date, but is not proactive and relies on complaints and evidence from neighbors and repeated violations. To date, violators who have received the NOVs have complied and no further action has been required though this could be challenged.

Lobby the Building Code Council

In some respects, this is a Building Code issue. A suggestion was to form a coalition of coastal communities to petition the Building Code Council, possibly with the help of the Department of Insurance, to review the issue. This would be spearheaded by the Planning and Inspections Department. Another possibility is to join other communities in lobbying the League of Municipalities for assistance.

Size Limit

Choose a maximum allowed square footage, such as 5000sf. Federal Housing laws allow limiting the maximum size of residential homes, but not minimum.

Trigger Size (ex: 5000sf) with Additional Restrictions

After a certain point, further restrictions would be required such as

- Larger setbacks
- Screening requirements
- Greater parking requirements
- Additional Safety Features
 - Sprinkler system
 - Higher deck and floor load standards
 - Emergency exit lighting

Conditional/Special Use Permits

Require a special use permit for structures greater than a certain size and impose additional requirements/restrictions. Requires a quasi-judicial hearing for each structure and permit applies to the property, not the individual. UNC School of Government recommends that only one hearing be held by either Planning Board or Board of Commissioners.

Floor Space Ratio

Set a maximum floor space ratio, such as 0.6. Floor space ratio is the square footage of the home divided by the square footage of the lot. For example, a 50x100 lot has 5000sf. Based on current lot coverage rules a home with one story could be no larger than 1500sf (5000 x 30%) and would have a ratio of 0.3, at two stories it would be 3000sf and have a ratio of 0.6. See the chart below for examples of typical lot sizes.

	Lot Width	Lot Depth	Area in SF	Maximum Allowed SF of Structure		
				0.3	0.6	0.9
Minimum Lot	50	100	5,000	1,500	3,000	4,500
Medium Lot	60	100	6,000	1,800	3,600	5,400
Small Oceanfront	50	200	10,000	3,000	6,000	9,000
Medium Oceanfront	60	250	15,000	4,500	9,000	13,500

Create a Required Rental Permit

Require each home to have a rental permit. Used by many communities to help maintain control over rental properties as well as insure that occupancy taxes are paid. If homes continue to pack in more guests than advertised or cause problems with other ordinances pull the permit.

No longer allow third stories

With our new ordinance it is feasible to have a third story of living as space, as has already been demonstrated.

Require an “Event Permit”

Create a permit process for people hosting events. This was discussed at the October 27, 2015 P&Z meeting.⁹ Realistically, this would mostly be an educational effort for brides and others planning an event and would be difficult to enforce.

Conclusions

The P&Z Board feels that the size of the structure is not the issue, but the use of the structure.

We feel that the Holden Beach “brand” is summed up in our ordinances: *“The town is recognized as a quiet, family-oriented beach community, and houses in the town are situated so that they are in close proximity. Residents and visitors come to the beach community to enjoy the relative peacefulness and serenity of the place...”*¹⁰

There is a desire to keep the community as it currently exists, as a quiet “family” beach.

The Planning and Zoning Board recognizes the importance of preserving and protecting the safety of residents and visitors, protecting property and of preserving the tranquility of life we enjoy and expect, however, we also recognize the need to support tourism, including vacation rental homes. In addition, property values are often based on the ability to cover the expenses of second homes by offering them as vacation rentals. A significant portion of our Town’s budget is derived from the summer rental season. A decrease in property values would lower the tax base and ad valorem taxes. We urge the Board of Commissioners to proceed cautiously.

We also feel that is important for potential investors to understand the nature of the island and activities that are permissible. They should not plan to construct a house based on the idea that it can be used for any use other than residential occupancy.

The Board feels that education can play an important role in this process. Property owners, Realtors, rental agencies, event planners and the construction community as well as individuals wishing to hold events on the island need to be aware of the rules.

We advise that any ordinance changes should be preceded by deeper analysis and public hearings to allow all stakeholders to be involved and give input.

¹ (n.d.). Retrieved October 17, 2016, from <http://www.hbtownhall.com/land-use-plan.html>

² See Attachment 1, Current Constraints on Structure Size, presented at August 2016 Board of Commissioners' Meeting

³ NC Department of Environment and Natural Resources Coastal Management - Oceanfront Construction Setback & Erosion Rates. (n.d.). Retrieved October 17, 2016, from <http://www.nccoastalreserve.net/web/cm/oceanfront-construction-setback>

⁴ TOWN OF HOLDEN BEACH ORDINANCE 15-01 FLOOD DAMAGE ... (n.d.). Retrieved October 17, 2016, from <http://www.hbtownhall.com/files/103907772.pdf>

⁵ GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015 SESSION ... (n.d.). Retrieved October 19, 2016, from <http://www.ncleg.net/Sessions/2015/Bills/Senate/PDF/S25v3.pdf>

⁶ [http://library.amlegal.com/nxt/gateway.dll/NorthCarolina/caswellb/townofcaswellbeachnorthcarolinacodified?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:caswellbeach_nc](http://library.amlegal.com/nxt/gateway.dll/NorthCarolina/caswellb/townofcaswellbeachnorthcarolinacodified?f=templates$fn=default.htm$3.0$vid=amlegal:caswellbeach_nc)

⁷ <http://www.townofduck.com/pzi/pzi.rs zoningmatrix.pdf>

⁸ See Attachment 2, Memo from Chief Building Official July 14, 2015

⁹ See Attachment 3, Event Permitting, presented at October 27, 2015 Planning and Zoning Board Meeting

¹⁰ Holden Beach | American Legal Publishing. (n.d.). Retrieved October 17, 2016, from http://www.amlegal.com/codes/client/holden-beach_nc/

Current Constraints on Structure Size

Below is a summary of some of the limits that are already in place for construction on Holden Beach. However, each lot is unique and needs to be evaluated as such by staff. This document is not intended to be definitive or all encompassing, but to be used as a general summary.

CAMA Setbacks

Locations Impacted: Oceanfront and Canal Properties
Description: **Oceanfront:** Minimum of 30x erosion rate (usually 60') from vegetation line for structures <5000sf, 60x (usually 120') for structures >5000sf. The setbacks are greater in areas where the erosion rate is high.
Canals: Setback of 30' from high water mark
Controlled by: Division of Coastal Management administers the Coastal Area Management Act (CAMA)
Reference: Various state statutes

Lot Coverage

Locations Impacted: R-1, R-2 and Rural
Description: No more than 30% of lot may be covered with impervious surfaces. On a 50'x100' lot this would yield 1500sf footprint, with three stories 4500sf.
Controlled by: Town
Reference: Chapter 157 Zoning Code
See Also: Water Quality below.

Lot Setbacks

Locations Impacted: R-1, R-2 and Commercial
Description: Structures must be setback from property lines, usually 25' in front, 20' in rear and 5' on sides.
Controlled by: Town
Reference: Chapter 157 Zoning Code

Parking Requirements

Locations Impacted: Island Wide
Description: Residential uses require minimum of 2 spaces, or one spot per bedroom, whichever is greater. Commercial requirements vary by use and location.
Controlled by: Town
Reference: Chapter 157.075 Zoning Code

Zoning

- Locations Impacted:** Island Wide
- Description:** Zoning determines uses that are permitted by right and conditionally in each zoning district. Residential dwellings are allowed in commercially zoned areas.
- Controlled by:** Town
- Reference:** Chapter 157 Zoning Code, §157.054. See attached Zoning District Summary for details.

Height Limits

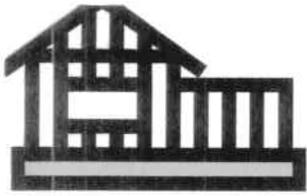
- Locations Impacted:** Island Wide for AE, VE and X flood hazard zones
- Description:** Ordinance restricts the height of structures to 31' from Design flood Elevation (DFE). DFE is Base flood Elevation plus 2' freeboard. Structures in X Zone may be a maximum of 35'.
- Controlled by:** Town
- Reference:** Ordinance 15-01, which amends Chapter 154 Flood Damage Prevention and Chapter 157 Zoning Code

Subdivision Restrictions

- Locations Impacted:** Within approved subdivisions
- Description:** Some subdivisions have restrictive covenants and deed restrictions. Some subdivisions have restrictions placed when the subdivision was approved.
- Controlled by:** Town and/or subdivision property owners (restrictive covenants)

Water Quality

- Locations Impacted:** Subdivisions Island Wide
- Description:** Subdivisions can be required to have a greater percentage than required by the 30% impervious rule. The "Phase Two" limit for Holden Beach is 30%, but based on certain factors the 30% limit on impervious surfaces may be increased.
- Controlled by:** Department of Water Quality
- Reference:** Planning Staff



Town of Holden

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Tuesday, July 14, 2015

Subject: Occupancy Classification Structure Located At 1355 Ocean Blvd West Holden Beach NC 28462, Parcel #: 2845GA04210

To: Gregory Eichman, Southern Charm LLC

From: Timothy D. Evans, Chief Building Official

Mr. Eichman, and any other parties of Interest:

The above mentioned property was issued a Construction permit based on the information provided by RH McClure Builders INC. License #3221 for the construction of a Single Family Home, and as this office has no authority to assume that the structure use would violate any statute or code by reference, the permit was approved for construction after a review based on those application documents on 09/14/2012.

Based on information gathered and provided to this office and after careful review of documents provided by outside sources, it is the opinion of this office that the use of the property on several occasions has violated both the building code as well as the Towns zoning ordinances.

The use of the properties' and the number of people that have attended the events as advertise is a indicator the structure is being utilized to the extent that this office can only conclude that it more resembles a classification as Assembly under the NCBC.

As you're contractor is aware such a use would have required the structure be built to the North Carolina Building Code (NCBC) and not the North Carolina Residential Code NCRC, Based on current documents and your own verbiage with advertising, there is no doubt in my mind as the chief building official that you are in violation of the NCBC and the Towns Zoning Ordinances when the structure has an event that is not limited specifically to groups that utilize the structure as intended and referenced in you construction documents.

Whenever you occupy a structure that was built and designed to accommodate Residential occupancy and then utilize it in a manner that could create potential loading and fire safety issue, then you place those occupants in danger.

The following are the violations:

1. 302.1 whenever a structure or portions of a structure are used or occupied for different reasons at different times then the structure must comply with all the rules as applicable to each of the purposes for which the rooms or spaces will be occupied.
2. 303.1 Definition of assembly Occupancy, Group A occupancy includes, among others the use of a building or structure, or a portion thereof, for the gathering of persons for the purpose such as civic, social or religious functions, recreation, food or drink consumption or awaiting transportation.
The exception: is that any of these activities with less than 50 people can be considered a Business occupancy.
3. The structure both primary and accessory were not designed to handle large groups of people and were not constructed to meet the safe loading requirements of chapter 16, Of the NCBC nor the egress requirements of chapter 10 of the NCBC, also in the event of a fire none of the separation requirements or fire prevention and safety features of Chapter 9 and 7 of NCBC are in place as required for an assembly occupancy.
5. The parking area under a home located within a v zone construction can only be utilized for storage and parking, occupying this area with tables and chairs would violate the parking requirements, shuttling folks in means you are having an event so large that there are more folks on site than the minimum number of parking places required to build the structure.

The pool area when used as an accessory use structure under the residential code, by any occupant that is renting the home would clearly meet the requirements for egress as set for under the NCRC, but once you invite large numbers of folks then the pool is hazard as it is not built with enough egress if the number exceed the occupancy load for use and type.

The following is just some of the deficiencies for this structure when used as an assembly type occupancy,

Once again this structure and its amenities are not design to handle more than is allowed under the North Carolina Residential Code. And the use as described and depicted in the information both visualized by myself and other documents clearly indicates the use as Assembly occupancy.

Following activities must be avoided,

PERMITTING

EVENTS

PLANNING AND ZONING
OCTOBER 27, 2015

Discussion Topics

1 History of Issue

2 Why Do We Need a Control Tool

3 How to Manage Issues

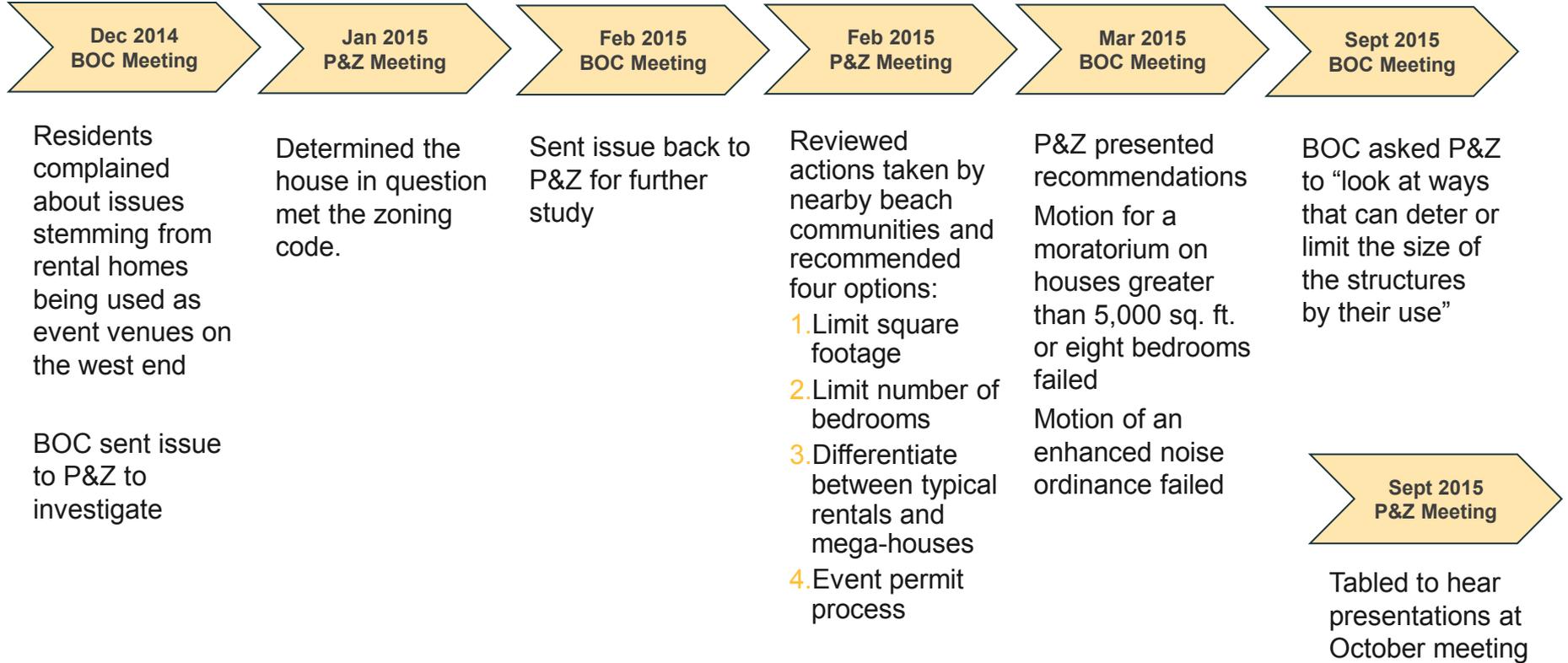
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History of the Issue

How did we even get to this point?

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History of the Issue



Background

- Most houses on the beach are not an issue
 - Usage, not size, is most of the problem
 - New noise ordinance and enforcement of parking and other ordinances would help greatly
- Tim and HOA's are getting existing problem homes in hand
- Need to prevent FUTURE home construction that is geared toward events
 - Remove incentive to build huge houses to host events

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Why Do We Need a Tool?

What is driving this?

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44% of couples are looking for a non-traditional venue that better reflects their personality

Banquet Halls - 22%

Country Clubs - 11%

Hotels - 11%

This Is Not Going Away

- Wedding receptions and events are a huge and growing business
- Need to control problems events cause neighbors
- Allow events, but manage the drawbacks.

3 How to Manage the Issue

Potential Solutions

Solution Options

- Tighten up existing ordinances
- Event Permits
- Assembly Use

**Tightening existing ordinances
would be the easiest solution**

§ 157.060 RESIDENTIAL DISTRICT (R-1).

(A) The R-1 Residential District is established as a district in which the principal use of land is for one- and two-family dwellings. The regulations of this district permit intensive development provided the necessary public and/or community water and sewer systems are available.

(1) A dwelling is a residence where people live for domestic purposes. Domestic use is defined as devoted to home duties and activities, nothing in this section shall preclude one- and two-family homes from being used as a vacation rental home consisting of a minimum of two overnight stays.

(2) Transient occupancy not consisting of at least two overnight stays shall be considered to be inconsistent with domestic residential usage and is not allowed. **This would include persistent usage for group gatherings for the purpose of short-term social or recreational activities.** This would include use as a clubhouse, lodge, public or private clubs, cabana clubs and property owner association facilities except when contiguous, owned by and within the borders of an on-island residential subdivision.

Why can't tightening this ordinance solve the problem?

Event Permits would allow property owners to fully utilize their homes, but not allow them to impinge on the rights of their neighbors.

Event Permitting

- Require a permit for any event over 50 people
- Charge enough for permit to cover admin required
- Events without a permit will be shut down
- Owner must be notified before event permit is approved (protects owners)
- Fines would be billed to the property owner, because they control the lease (*Patmore v. Town of Chapel Hill*)
- Permit would cover issues impacting neighboring properties, and put renters on notice about the rules

Noise

- Restrict the size of outdoor speakers
- Even with restricted speaker size limit decibel reading to safe levels
- No restriction on indoor speakers (drives the party indoors, which is less annoying to neighbors)
- Establish a cut-off time. Quiet hours after 10:00pm weeknights, 11:00pm on weekends.

Note: If a new Noise Ordinance is adopted this issue would be covered

Dune Protection

- No structures left overnight
- No moving sand
- No seating or walking in dunes
- Sound is same as above – no big sound systems
- No candles, open flames, etc.

These are already in our ordinances!

Lights

- Other than safety lights, restrict additional party lights.
- Turtle season considerations
- Should not illuminate other homes

Parking

- No on street parking
- No more than four vehicles parked end to end – or whatever the fire department says they could safely cover.
- Must follow the Parking Ordinances

Safety

- Hire off-duty police officer for more than 100 guests, plus one for every 50 additional guests
- Events over 50 people need licensed (ABC trained) bartenders if alcohol is served

Other Considerations

- Frequency: limit number of event permits per property per year
- Owners: Allow each property owner to host one event per year without a permit fee
- Suggestion: Establish a task force to work out details. Include all stakeholders.

Assembly Use is currently being applied to address the west end wedding house problems

Assembly Use

- We already have Assembly Use Permits in our ordinances: Chapter 91 NC Fire Prevention Code, 91.42 Operational Permits, 105.6.34 of the North Carolina Fire Code, Chapter 1, § 105
- Allow in R-1 and R-2 if less than three per year
- Define a Large Event as 50 people or more for more than one hour for any reason where there is:
 - Banquet seating
 - Live or recorded music
 - A/V Equipment
 - Staff such as caterers, waiters, bartenders, parking attendants
 - Tents
 - Shuttle Services

What are other Municipalities Doing?

Lots of different methods, but most have a plan!

- Some determine if it is private (family) function
- Some are using Temporary Use Permits
- Others: Special Use Permits for events <12 hrs but must not have significant impact on neighboring properties
- Limiting the number of permits allowed per property – three per year is common

QUESTIONS?
