
2022-23 (1ST READING): TO AMEND THE CODE OF ORDINANCES, CITY OF MYRTLE BEACH, APPENDIX A ZONING ARTICLE 6 COMMUNITY APPEARANCE BOARD TO STREAMLINE THE APPLICATION AND REVIEW SCHEDULE.

Applicant/Purpose: Myrtle Beach Community Appearance Board / to amend the Code to align submittal deadlines with the traditional CAB meeting schedule.

Brief:

- Current code requires plans be submitted at least 10 *workdays* before CAB review. The intent of the regulation is to provide adequate lead-time for staff to review the application prior to its consideration by CAB.
- Staff and the CAB strive to provide the most effective and efficient service to our applicants. Ten calendar days is more than sufficient to provide this service.
- Planning Commission (4.19.22) Voted unanimously (7/0) to recommend approval of the ordinance as presented, and to strongly recommend City Council form a committee made up of members of the CAB, the Planning Commission, the Planning Director and other staff, members of the public, and whomever else City Council deems appropriate, to review the procedures of the CAB and the Planning Commission to make sure the procedures provide for adequate public notice and input.

Issues:

- This amendment does not materially change the Zoning Code, nor does it affect the public's notice about items coming before the Board, nor impact the public's right to appeal a decision of the Board.
- The Community Appearance Board regularly meets the first and third Thursday of every month, and a submittal schedule based on calendar days best aligns with the established CAB schedule.

Public Notification: Agenda published and posted. Legal ad ran in the Myrtle Beach Herald. Written input received from 74 people to date.

Alternatives:

- Modify or deny the proposed ordinance.

Financial Impact: N/A

Manager's Recommendations:

- I recommend 1st reading of the Ordinance (4.26.22).
- Staff is still digesting the Committee recommendation and at this point is not prepared to make a recommendation.

Attachment(s): Ordinance, Supporting Materials

CITY OF MYRTLE BEACH
COUNTY OF HORRY
STATE OF SOUTH CAROLINA

TO AMEND THE CODE OF
ORDINANCES, CITY OF MYRTLE
BEACH, APPENDIX A ZONING
ARTICLE 6 COMMUNITY
APPEARANCE BOARD TO
STREAMLINE THE APPLICATION AND
REVIEW SCHEDULE.

IT IS HEREBY ORDAINED that the Myrtle Beach Code of Ordinances, Appendix A Zoning, Article 6 Community Appearance Board, Section 605.A Submission of Documents, Subsections 1 and 3, are amended as follows:

Section 605. Procedures

605.A. Submission of Documents.

1. *Conceptual Plan Review.* An applicant may receive a conceptual plan review by the Board. Submission of plans for conceptual review must be made at least ten ~~workdays (excluding city holidays)~~ calendar days before a scheduled Board meeting. Conceptual review will be scheduled for the first scheduled Board meeting after submission that meets the ten day requirement...
3. *Final Plan Review.* Applicants for structural or site plan permits must receive a final plan review by the Board. The zoning administrator shall arrange and schedule final plan review. Submission of plans for final plan review must be made at least ten ~~workdays (excluding city holidays)~~ calendar days before a scheduled Board meeting...

This ordinance will take effect upon second reading.

BRENDA BETHUNE, MAYOR

ATTEST:

JENNIFER ADKINS, CITY CLERK

1st Reading: 4-26-2022

2nd Reading:

Supporting Materials

STAFF COMMENTS:

Public Information Office:

The proposed change to the zoning code does not materially affect the public's notice about items coming before the Community Appearance Board. Nor does it interfere with, shorten or otherwise abridge the public notice required by the South Carolina Freedom of Information Act for agenda items considered by a public body.

The Freedom of Information Act specifies that agendas for public bodies must be made available no less than 24 hours before the meeting. Through the weekly Friday Fax email, which includes agendas for the upcoming week's boards, commissions and committees here in the City of Myrtle Beach, we easily exceed that 24 hour notice for the CAB's agenda and every other public body.

The proposed zoning code text amendment does not change the timing or delivery of the CAB agenda as part of our regular outbound communications. We more than meet the letter and the intent of state law for public notice under the SC FOIA. The public's input on the CAB agenda is not harmed, abridged or threatened.

The South Carolina Freedom of Information Act actually spells out the process by which a member of the public can request access to documents, as well as the process by which a public body responds to that request. The FOIA does NOT specify that documents must be made available within 10 working days.

Instead, as you'll see in the paragraphs below, it states that for documents which are less than 24 months old, the public body must provide an initial reply and determination within 10 working days as to whether it considers the documents requested to be public under the FOIA. The public body then has an additional 30 days to search for, retrieve, redact (if necessary) and provide those documents. See the **highlighted sections**, please.

The window of initial response and ultimate document production is longer when the request is for access to public documents that are more than 24 months old. The full SC FOIA is available on the city's website at <https://www.cityofmyrtlebeach.com/government/foia.php>. It includes our fee schedule.

Section 30-4-30

(B) The public body may establish and collect fees as provided for in this section. The public body may establish and collect reasonable fees not to exceed the actual cost of the search, retrieval, and redaction of records. The public body shall develop a fee schedule to be posted online. The fee for the search, retrieval, or redaction of records shall not exceed the prorated hourly salary of the lowest paid employee who, in the reasonable discretion of the custodian of the records, has the necessary skill and training to perform the request. Fees charged by a public body must be uniform for copies of the same record or document and may not exceed the prevailing commercial rate for the

1 producing of copies. Copy charges may not apply to records that are
2 transmitted in an electronic format. If records are not in electronic format and
3 the public body agrees to produce them in electronic format, the public body
4 may charge for the staff time required to transfer the documents to electronic
5 format. However, members of the General Assembly may receive copies of
6 records or documents at no charge from public bodies when their request
7 relates to their legislative duties. The records must be furnished at the lowest
8 possible cost to the person requesting the records. Records must be provided in
9 a form that is both convenient and practical for use by the person requesting
10 copies of the records concerned, if it is equally convenient for the public body
11 to provide the records in this form. Documents may be furnished when
12 appropriate without charge or at a reduced charge where the agency
13 determines that waiver or reduction of the fee is in the public interest because
14 furnishing the information can be considered as primarily benefiting the
15 general public. Fees may not be charged for examination and review to
16 determine if the documents are subject to disclosure. A deposit not to exceed
17 twenty-five percent of the total reasonably anticipated cost for reproduction of
18 the records may be required prior to the public body searching for or making
19 copies of records.

20
21 (C) Each public body, upon written request for records made under this chapter, shall
22 within ten days (excepting Saturdays, Sundays, and legal public holidays) of the
23 receipt of the request, notify the person making the request of its determination and
24 the reasons for it; provided, however, that if the record is more than twenty-four
25 months old at the date the request is made, the public body has twenty days
26 (excepting Saturdays, Sundays, and legal public holidays) of the receipt to make this
27 notification. This determination must constitute the final opinion of the public body as
28 to the public availability of the requested public record, however, the determination
29 is not required to include a final decision or express an opinion as to whether specific
30 portions of the documents or information may be subject to redaction according to
31 exemptions provided for by Section 30-4-40 or other state or federal laws. If the
32 request is granted, the record must be furnished or made available for inspection or
33 copying no later than thirty calendar days from the date on which the final
34 determination was provided, unless the records are more than twenty-four months
35 old, in which case the public body has no later than thirty-five calendar days from the
36 date on which the final determination was provided. If a deposit as provided in
37 subsection (B) is required by the public body, the record must be furnished or made
38 available for inspection or copying no later than thirty calendar days from the date on
39 which the deposit is received, unless the records are more than twenty-four months
40 old, in which case the public body has no later than thirty-five calendar days from the
41 date on which the deposit was received to fulfill the request. The full amount of the
42 total cost must be paid at the time of the production of the request. If written
43 notification of the determination of the public body as to the availability of the
44 requested public record is neither mailed, electronically transmitted, nor personally
45 delivered to the person requesting the document within the time set forth by this
46 section, the request must be considered approved as to nonexempt records or
47 information. Exemptions from disclosure as set forth in Section 30-4-40 or by other
48 state or federal laws are not waived by the public body's failure to respond as set forth
49 in this subsection. The various response, determination, and production deadlines
50 provided by this subsection are subject to extension by written mutual agreement of

the public body and the requesting party at issue, and this agreement shall not be unreasonably withheld.

Zoning:

The effect of the proposed change on the CAB Schedule:

With a typical 10-work day deadline (current regulations), the deadline for the second meeting is the same as the date of the first meeting. If there's a holiday, the deadline for the second meeting actually falls before the first meeting. In the example below, an applicant receiving **Conceptual Review** at the first meeting of the month (May 5th) has to submit **revisions** for the 10-workday deadline (May 19th) and can't receive **Final Approval** until the first meeting in June.

MAY 2022						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	CAB Meeting/ Deadline 5	6	7
8	9	10	11	12	13	14
15	16	17	18	CAB Meeting/ Deadline 19	20	21
22	23	24	25	26	27	28
29	30	31	1	CAB Meeting/ Deadline 2	3	4

Note that 10 days is a minimum. In adopting their annual calendar, CAB typically schedules deadlines longer than 10-days out to account for holidays and staff process. For example, in the calendar above, staff cannot practically process application intake on the same day as a CAB meeting. Therefore the deadline is typically the day before, resulting in an actual 11-day deadline.

With a 10-calendar day deadline (proposed), an applicant can have **Conceptual Review** at the first meeting of the month (May 5th). Then the applicant can submit **revisions** (by May 9th) for **Final Approval** at the second meeting of the month (May 19th)

MAY 2022						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5 CAB Meeting	6	7
8	9 CAB Deadline	10	11	12	13	14
15	16	17	18	19 CAB Meeting	20	21
22	23	24	25	26	27	28
29	30	31	1	2	3	4

The effect of the proposed change on the CAB appeals process:

The proposed change does not materially affect the process of appealing a decision of the Community Appearance Board:

Section 606. Appeals from Decisions of the Community Appearance Board

606.A. Litigation. Any person who may have a substantial interest in any decision of the Board may appeal to the Circuit Court by filing with the clerk of the court. The appeal shall be filed within 30 days after the decision of the Board is postmarked. Within thirty days from the time of notice from the clerk of the appeal, the Board shall file with the clerk a certified copy of the proceedings held before the Community Appearance Board, including a transcript of the evidence heard before it, if any, and the decision of the Board including its findings of fact and conclusions of law.

606.B. Mediation. As an alternative to litigation, a property owner whose land is subject to a Community Appearance Board decision may file a notice of appeal accompanied by a request for pre-litigation mediation. A notice of appeal and request for pre-litigation mediation shall be filed within 30 days after the decision of the Board is postmarked. The mediation shall be conducted in accord with the South Carolina Circuit Court Alternative Dispute Resolution Rules and section 6-29-825. A person who is not the owner of the property at issue may petition to intervene as a party in the mediation, and

1 this motion shall be granted if the person has a substantial interest in the
2 Board's decision. All property owners or representatives and interveners
3 shall be notified and have opportunity to attend the mediation. The mediation
4 may result in either an impasse or a mediation settlement agreement. No
5 settlement agreement shall be effective until approved by City Council in
6 public session and by the circuit court judge. If the mediation results in an
7 impasse or if a settlement is not approved, the property owner has the option
8 to pursue an appeal as described in 606.A - *Litigation*. Such petition for
9 appeal must be filed with the Circuit Court within 30 days of either the report
10 of impasse filed by the mediator or the council or judges failure to approve.
11

12 **Section 403. Findings of Fact Required**

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16 In reviewing any petition for a zoning amendment, the Planning Commission shall
17 identify and evaluate all factors relevant to the petition, and shall report its findings in full,
18 along with its recommendations for disposition of the petition, to the City Council.
19 Factors shall include, but shall not be limited to, the following:
20

- 21 403.A. Whether or not the requested zoning change is consistent with the
22 Comprehensive Plan or is justified by an error in the original ordinance.
23
24 403.B. The precedents and the possible effects of such precedents, which might
25 result from approval or denial of the petition.
26
27 403.C. The capability of the City or other government agencies to provide any
28 services, facilities, or programs that might be required if the petition were
29 approved.
30
31 403.D. Effect of approval of the petition on the condition or value of property in the
32 City.
33
34 403.E. Effect of approval of the petition on adopted development plans and policies
35 of the City.