

**CITY OF NEW BERN
BOARD OF ALDERMEN MEETING
OCTOBER 10, 2023 – 6:00 P.M.
CITY HALL COURTROOM
300 POLLOCK STREET**

- 1. Meeting opened by Mayor Jeffrey Odham. Prayer by Rev. Robert Johnson. Pledge of Allegiance.**

- 2. Roll Call.**

Present: Mayor Jeffrey Odham, Alderman Rick Prill, Alderman Hazel Royal, Alderman Johnnie Ray Kinsey Alderman Barbara Best, and Alderman Robert Brinson. Absent: Alderman Robert Aster. A quorum was present.

Also Present: Foster Hughes, City Manager; Marvin Williams, Assistant City Manager; Michael Scott Davis, City Attorney; and Brenda Blanco, City Clerk.

- 3. Approve Agenda**

The Mayor announced Alderman Aster asked that Item 11 be tabled until the next meeting since he requested the presentation and is not in attendance this evening.

Alderman Royal made a motion to approve the agenda with Item 11 tabled, seconded by Alderman Best. The motion carried unanimously 6-0.

- 4. Request and Petition of Citizens.**

There were no requests or petitions from citizens.

Consent Agenda

- 5. Consider Adopting a Resolution to Close Specific Streets for Beary-Not-So Scary Halloween Event.**

Berry Merry Events requested to close the 200-300 blocks of Middle Street, 300-400 blocks of Pollock Street, and 200 block of Craven Street for the Beary Not-So-Scary Halloween event on October 28, 2023 from 3 p.m. to 8 p.m.

- 6. Consider Adopting a Resolution to Close the 600 Block of New Street for a Neighborhood Block Party.**

Sheila Batten requested the 600 block of New Street be closed on November 4, 2023 from 2 p.m. until 10 p.m. for a neighborhood block party.

7. Consider Adopting a Resolution Closing Specific Streets for the 2023 Christmas Parade.

The City of New Bern Parks and Recreation Department will be organizing and overseeing this year's Christmas parade. The department requested to close the 300-600 blocks of Broad Street and the 200-300 blocks of Craven Street from 9:30 a.m. until 1 p.m. on December 02, 2023, along with the 400-800 blocks of George Street from 8 a.m. until 1 p.m.

Alderman Kinsey noted the Christmas parade is a city-sponsored event, but his understanding from speaking with the City Manager is that Parks and Recreation will now "take on" the event. Considering this is a large undertaking, he asked when the Board would have an opportunity to discuss or vote on the City assuming this task. Unless the Board has other ideas, Mr. Hughes said staff would treat this as another Parks and Recreation program. Previous organizers had difficulty with securing participation, and staff will look at reimaging the parade to attract more participants and will not charge for the event. Alderman Kinsey felt the Board should have a discussion and voice in the decision instead of one individual making the decision. He felt the Board should be informed of such situations.

Alderman Kinsey made a motion to put an item on the Board's next agenda to discuss the parade, seconded by Alderman Royal. Upon a roll-call vote, the motion carried 6-0.

The City Clerk inadvertently called Alderman Kinsey's name out of order when a vote was taken on the motion. Alderman Kinsey commented that he felt everyone on the Board should have an opportunity to be the last person called for a vote. Mayor Odham said that is a rule and procedure of the Board, and if Alderman Kinsey wanted to take the heat when it is his time to make a deciding vote then that decision is on him.

Alderman Kinsey made a motion that the Board look at giving turns to each individual on the Board to be the final vote and last person to decide, seconded by Alderman Royal. During the brief discussion, it was noted the Mayor is no longer the tiebreaker. Alderman Prill thought earlier in the year when policies and procedures were discussed that the Board approved the current process. Mayor Odham said during his two terms as alderman, Mayor Outlaw would rotate calling for votes by starting at one end of the dais and the next time starting at the other end. That meant every decision was started or ended by Ward 1 or Ward 6. Mayor Odham said he had suggested the mayor make the final decision, so an alderman does not take the heat for casting the final vote on a controversial issue. Alderman Prill stated he would feel more comfortable finishing out the year under the procedure approved by the Board at the beginning of the year and take up the issue for further discussion when the Board's rules of policies and procedures are reviewed in January as there may be other items for discussion. Alderman Royal did not recall an earlier vote or conversation about the order in which to call for votes, and she asked the City Clerk if she had notes on that. Ms. Blanco did not recall the Board making such a decision, but noted new Board members had been

given a copy of the Board's existing rules and procedures when they took office. Mayor Odham did not think the rules and procedures covered the topic of how the meeting is conducted and votes cast. Alderman Best agreed with the suggestion of finishing out this year under the current process and addressing the matter in January of 2024. The motion on the floor failed 2-4 with Mayor Odham, Alderman Prill, Alderman Best, and Alderman Brinson voting against it. After the vote, Alderman Best asked for confirmation that the votes for the rest of the year would continue under the current practice and the topic would be discussed again in January. Mayor Odham said the topic could be discussed at any time the Board desired.

8. Approve Minutes.

Draft minutes from the September 26, 2023 meeting were provided for review and approval.

Alderman Prill made a motion to approve the Consent Agenda as amended, seconded by Alderman Royal. Alderman Brinson said the original motion was to discuss the parade at the next meeting, not pull Item 7 from the Consent Agenda. Alderman Prill amended his motion to approve the Consent Agenda subject to Item 7 being removed and rescheduled for discussion at the next meeting, seconded by Alderman Royal. Upon a roll-call vote, the motion carried unanimously 6-0.

9. Presentation of Inaugural Community Commitment Award by NC Recreation & Park Association.

Representing the NC Recreation and Parks Association, Billy Wilkes was joined by Taurance Williams, New Bern's Supervisor of Athletic Services, to announce Charles Pickett as the recipient of the Inaugural Community Commitment Award. This award is given based on commitment and volunteerism. Mr. Pickett is a parks and recreation volunteer and youth sports coach.

10. Presentation of American Red Cross Premier Blood Partner Award.

On behalf of the Red Cross, Kristin Willis recognized the City of New Bern as an American Red Cross Premier Blood Partner. The City has a longstanding history of participating in blood drives, the most popular of which is the Battle of the Badges.

11. Presentation on ShotSpotter.

This item was tabled to the next meeting as noted under Item 3.

12. Conduct a Public Hearing and Considering Adopting an Amendment to Section 15-343 – “Flexibility in Administration Required” of the Code of Ordinances.

The Planning and Zoning Board (“P&Z”) undertook several discussions about off-street parking in downtown and recommended expansion of the downtown business district defined as the “central retail core” in Section 15-343 of the City’s ordinances. The current core is defined as the area between the east side of Hancock Street and west side of Craven Street and the north side of South Front Street up to the north side of Broad Street. The expansion would extend the area to the south side of Broad Street, down the west side of East Front Street to the south side of South Front Street. Although the need for this change was discussed at some length during the Board’s September 26, 2023 meeting, Jessica Rhue, Director of Development Services, explained in extensive detail why the ordinance needed modification. She shared a PowerPoint presentation to provide background information, P&Z’s findings, the proposed text amendment, and a map of the expanded central retail core. Through no fault of their own, there are businesses operating outside of compliance with the City’s ordinances.

Mayor Odham opened the public hearing, and the following came forward:

- Maria Cho of 252 Pollock Street asked the Board to pause making a decision and consider reestablishing a parking committee.
- Dr. Jim Polo of 223 Craven Street asked for clarity as to whether the current ordinance allowed the Board to grant a variance or exception, and Mr. Davis responded no.

Alderman Best made a motion to close the public hearing, seconded by Alderman Prill. The motion carried unanimously 6-0.

With respect to Dr. Polo’s question, Alderman Brinson asked about the process for bringing this before the Board of Aldermen versus the Board of Adjustment. Mr. Davis explained the governing board is a political body, not a quasi-judicial body. A governing board’s instinct is to be legislative and do what is politically expedient instead of following the law and continuing with the process of a quasi-judicial hearing. Because of politics, this will result in a mistake being made during the special use process. Thus, the duty falls under the Board of Adjustment so it can simply follow the six elements of a special use process without the pressure of politics pulling them in one direction or the other. Denial of a special use permit (“SUP”) can be extraordinarily costly to local governments because of the cost of attorney’s fees to defend appeals.

Considering the number of comments and emails received by her and the Board, Alderman Royal asked if comments were presented at P&Z’s meetings. Mrs. Rhue replied no and said there was very low attendance at those meetings.

Mr. Davis explained this is a legal problem that needs a solution. Alderman Prill asked if the six businesses that are out of compliance could be identified. Mr. Davis did not want to shame any of them since they had not done anything wrong.

However, he noted Blackbeard's is one of the businesses and explained the structure went from a brokerage firm to an empty building to a restaurant. There is no parking on the site. Absent from changing this rule, that structure would have to sit empty.

(Alderman Kinsey momentarily stepped out of the room at 7:01 p.m.)

Alderman Prill asked if there is an option to grandfather in the six businesses to eliminate the legal concern. Mr. Davis said that could be done, but he questioned how to handle other businesses in the red boundary that may have a change of use and not comply with the ordinance (see map in PowerPoint). Alderman Prill said he was not sure the Board wanted to spend time at this meeting to get into all the details and issues. Alderman Royal recalled Mrs. Rhue said there were a lot of layers, and the concerns were valid. In light of that and Mrs. Cho's comments that she was confused and needed clarity, Alderman Royal felt it would be beneficial to find another time to sit down with staff to look at the concerns. Alderman Brinson and Mayor Odham said they had no problem discussing the matter tonight.

Alderman Prill laid out his concerns:

- Per Mrs. Rhue's email to the Board, the changes being proposed are not intended to fix any parking problem, but to be a solution to a permitting problem. The proposal is to exempt off-street parking requirements by increasing the exempt area by approximately 50%. He questioned why this is being sought now and why the previous Board did not take action when Mr. Davis brought this to their attention. Mr. Davis clarified that he did not bring the issue before the previous Board, but to staff. Alderman Prill said that raises a concern as to why staff did not elevate this "serious" issue or did they and it fell on deaf ears. Although his criticism was directed at this Board or the previous Board's action or lack thereof, Alderman Prill encouraged Mrs. Rhue to keep up the work to address matters.
- The zoning ordinance requires equitable treatment throughout the entire community. Looking at Mrs. Rhue's map, the area in yellow is not substantial in character to the area in red. This means the area should not be used as a premise for moving forward.
- The proposal provides relief from existing parking requirements intended for new construction. The existing ordinance already contains a mechanism to address this by providing staff flexibility on a case-by-case basis to modify off-street parking requirements when it makes sense to do so. The land use ordinance contains a guide on parking requirements based on the proposed nature of a business, not "hard and fast numbers." Mrs. Rhue disagreed with this statement, and Mr. Davis explained the ordinance contains objective standards. Mrs. Rhue stated when the land use ordinance is rewritten, there will be no flexibility given to staff unless that flexibility is clearly defined. Over the years, Mr. Davis has advised staff not to vary by more than 10% and to document the reason a variance was allowed.

(Alderman Kinsey returned to the room at 7:15 p.m.)

With respect to Alderman Prill's concern about the differences between the yellow and red zones on the map, Alderman Brinson noted Mrs. Rhue indicated P&Z wanted to lock in parking in that area by expanding the zone. That means the blue areas would be locked in, and the magenta areas would be subject to the SUP. That was a second consideration for drawing the boundaries as proposed. Another point is the entire area is zoned C-3 or C-2. While that zoning allows residential homes, it is primarily for commercial use. Alderman Prill countered that the parking would not be locked in by taking this action, but instead the final decision to modify parking was being handed off to the Board of Adjustment. Alderman Brinson pointed out an alderman could offer comment at a Board of Adjustment meeting. Mr. Davis suggested the Board operate under the assumption that when applied for, a SUP would be granted. Mayor Odham said an option is to adopt the proposed ordinance without the SUP terminology, making it a moot point. Mr. Davis noted if that action is taken, the Board could also add the option back at some point.

- There are many properties in the red area that could be converted to commercial. Some areas have very little on-street parking. Is the City setting itself up to be forced to build a parking deck?
- A larger area would be exempt from a satellite parking option. Why not focus on that to make it more functional? Mr. Davis responded there is no where to go, and Alderman Prill suggested a potential option is to allow an applicant to lease spaces in a municipal lot. Mr. Davis explained legally the City cannot allocate those parking spaces to a private individual for 30 years to comply with the requirements. That is giving a private emolument to a developer.
- One of the bases of the proposal is that the ordinance will protect historical buildings. Those buildings are already protected through the Historic Preservation Commission. Mr. Davis did not believe staff meant that statement literally, but instead was trying to express that by maintaining the existing parking the structures will remain economically viable. Otherwise, if the owner changes the use and cannot accommodate for parking, the building will sit vacant and have no economic value. Alderman Prill stated he nor any member of the Board has had an opportunity for staff to explain that.
- The Board does not have a lot of information, but is being asked to make a policy decision without the detailed information he felt was needed to make an educated and smart decision.
- The area in red along South Front Street only contains one historic building, which is the Harvey Mansion. Mrs. Rhue said she regretted using the term historic buildings in her description, as she meant historic downtown New Bern and encouraging the reuse of existing buildings. As the ordinance is currently written, almost every single permit request must be denied. She was not "pushing" a solution. In her 22 years in this profession, she has spent longer working on this text amendment than anything else.

Mr. Davis said the two variables are the SUP and the boundary lines. In the Board's deliberations, it can decide whether to leave in the SUP process.

- The 76 spaces at the convention center should not be included in the boundary as Craven County can close that parking to the public when an event is happening.
- The proposal excludes short-term rentals. Short-term rentals in the yellow area do not have to meet parking requirements, but short-term rentals in the red boundary would be mandated to meet the requirements. By adopting the proposed change, the Board is creating a legal problem. Mr. Davis did not think that would be the case. Any existing short-term rental in the yellow area would be grandfathered, and any new short-term rentals would need to comply with the parking requirements.
- The proposal only preserves off-street parking spaces to the extent that a decision must be made regarding a SUP. Although he was not saying no to the SUP, he was concerned about long-term ramifications.
- P&Z suggested the formation of a parking subcommittee within P&Z that included staff members. The purpose would be to address citywide parking issues. That has not been presented as a part of an option. A subcommittee would be a good function to have within P&Z. Mrs. Rhue said P&Z is about to embark on updating 26 chapters of the entire land use ordinance. There was discussion about one of the subcommittees being geared toward parking, but also to review every other land use issue in the 26 chapters.
- While the change focuses on the downtown community, the implications impact the entire city. Is the City setting itself up for other areas to seek the same rules as downtown? Mr. Davis explained there are corridors in the city. If another historic district were to request the same treatment, that would be something to consider. The same accommodation and treatment provided for the historic district would not be given to more modern construction projects.

With respect to the various potential problems that may be encountered, Alderman Royal asked if in the future the Board could address issues as they come up. Mr. Davis said the Board can always address issues. The most conservative path to take tonight would be to remove the SUP, which would lock in existing parking. This would allow the City to maintain what it has without prohibiting a building's use in a commercial zone simply because there is no way to comply. Facts may change in years to come, and the Board may decide to reinstate the SUP.

- Given the fact the convention center may never get back on its feet, county officials must be considering whether it wants to stay in the convention center business. They may decide it is not worth their effort and offer the property for sale. Alderman Prill said he had been told the county is considering selling the Shriner's property. The Kessler Group originally sought three properties. If the convention center and Shriner's property were offered for sale, Kessler would then have three properties as it originally desired. Any large developer could build a hotel that may include the convention center, thus minimizing most of the parking. What are the potential ramifications of including the former Shriner's property or the convention center in the exemption? In response, Mayor Odham confirmed

with Mr. Davis that if the SUP were removed the convention center would have to keep its 76 parking spaces on that site. Thus, the convention center could be carved out, or removing the SUP would solve Alderman Prill's concern. The old Shriner's property is not included in the proposal and would have to comply with current requirements.

In summary, Mayor Odham explained the Board could do nothing, approve the item as written and proposed, delay a decision, approve it with the removal of the SUP, or approve it with redrawn boundaries.

- As a final comment, Alderman Prill noted no one attended tonight's public hearing to speak in favor of the change. One would think the business community would have representation present to encourage the Board to adopt the change. Maybe that means there is no urgency. He would rather see deliberate, smart, well thought out development and not development at all cost. While he encourages development, he wants as much detail as possible thought out ahead of time.

Stating he knew the chair of P&Z personally, Alderman Brinson felt the chair would take offense to Alderman Prill's remarks about being pro development at all cost. Alderman Brinson also pointed out P&Z took five months to discuss this issue, indicating there is no sense of urgency. The proposal was a deliberate and planned process. Therefore, he took issue with Alderman Prill's comments. Based on comments made, Alderman Brinson understood the consensus of the Board was to remove the SUP. He also felt the convention center was a valid concern that should be discussed with the county.

Alderman Prill made a motion to defer taking action on the proposed ordinance until those members of the Board that would like to get more detail have the opportunity to do so, and that the Board has the opportunity to talk with staff about the possibility of redrawing the boundaries and discuss the special use permit provision, and then come back at an upcoming meeting with a revised proposal that might be a little bit more acceptable. The motion died for lack of a second.

Alderman Royal questioned whether the citizens who spoke in the public hearing now had clarity on the matter. The Board elected not to reopen the public hearing after Mrs. Cho indicated from the audience she had no desire to speak again.

Alderman Royal made a motion to adopt the ordinance with provisions to extract from the ordinance the special use permit and not include the convention center, seconded by Alderman Brinson. Upon a roll-call vote, the motion carried 5-1 with Alderman Prill voting against it.

Alderman Best made a motion to take a 10-minute break, seconded by Alderman Brinson. The motion carried unanimously 6-0, time being 8:23 p.m. The meeting resumed at 8:33 p.m.

13. Conduct a Public Hearing and Consider Adopting an Ordinance to Annex 3277 Old Airport Road.

Michael and Rose Miller submitted a petition to annex the property at 3277 Old Airport Road. They indicated plans to construct a residence on the property and recently entered into a Water and Sewer User Agreement for service at the site.

Mayor Odham opened the public hearing, but no one came forward to speak. Alderman Best made a motion to close the public hearing, seconded by Alderman Kinsey. The motion carried unanimously 6-0.

Alderman Brinson made a motion to adopt an ordinance to annex 3277 Old Airport Road, seconded by Alderman Kinsey. Upon a roll-call vote, the motion carried unanimously 6-0.

14. Conduct a Public Hearing and Consider Adopting an Ordinance to Annex a Portion of Tax Parcel 8-209-13001 and All of 8-209-28001.

Weyerhaeuser petitioned to annex portions of Tax Parcel ID's 8-209-13001 and 8-209-12003. The portion of 8-209-12003 has now been assigned a new parcel ID (8-209-28001) by the Craven County Tax Office. This is the property that the Board conveyed to Weyerhaeuser on August 22, 2023 after approving an exchange of property.

Mayor Odham opened the public hearing, but no one came forward to speak. Alderman Best made a motion to close the public hearing, seconded by Alderman Kinsey. The motion carried unanimously 6-0.

Alderman Best made a motion to adopt an ordinance to annex a portion of Tax Parcel 8-209-13001 and all of 8-209-28001, seconded by Alderman Prill. Upon a roll-call vote, the motion carried unanimously 6-0.

15. Conduct a Public Hearing and Consider Adopting an Ordinance to Annex Tax Parcels 8-210-11002, 8-210-11003 and a Portion of 8-210-23000.

McCullough Farms petitioned to annex Tax Parcels ("PID") 8-210-11002, 8-210-11003, and a portion of 8-210-23000. The property is vacant land that is contiguous to the City of New Bern's municipal boundary. After confirming this is a new phase of development, Alderman Prill asked if the development plan had been approved and if not when it would be approved. Mr. Davis said it was his understanding that the property is being sold to a developer, and he expected the development plans would be forthcoming.

Mayor Odham opened the public hearing. Allyson Engebretson with Paramount Engineering said this is the first step in the process before developing phases 3 and 4 of Craeberne Forest. Alderman Best recounted residents' concerns about ingress and egress and asked if there would be an additional means to enter and exit the neighborhood. Ms. Engebretson confirmed a second outlet was part of the plan.

Alderman Prill pointed out P&Z would have authority to approve the plan and that approval would not be at the Governing Board level. He suggested Alderman Best attend the P&Z meeting if she wanted to assure the plan included an additional outlet. Alderman Brinson clarified that the property is already in the ETJ and is primarily zoned R-6. From the information he has learned through the MPO, there will be two connections to the neighborhood. Ms. Engebretson noted a traffic impact analysis was being obtained and that development would be a long process that is partly dependent on the Hwy. 43 connector project. Under the best-case scenario, her estimate was that permits would be sought in 12-18 months with development following that.

Alderman Royal made a motion to close the public hearing, seconded by Alderman Brinson. The motion carried unanimously 6-0.

Alderman Brinson made a motion to adopt an ordinance to annex Tax Parcels 8-210-11002, 8-210-11003, and a portion of 8-210-23000, seconded by Alderman Best. Upon a roll-call vote, the motion carried unanimously 6-0.

16. Appointment(s).

No appointments were made.

Mayor Odham asked about the number of applicants for the MSD Advisory Committee, and Mr. Hughes announced there were currently 13. Staff hopes to have a larger pool of applicants to bring before the Board by the second meeting in November. Alderman Prill was disappointed and surprised by the small number of applicants given how many people expressed interest during the meetings. Alderman Prill asked if an additional notice would be issued seeking more applicants, and Mr. Hughes responded yes and indicated staff was hoping for 30 applicants.

17. Attorney's Report.

The City Attorney had nothing to report.

18. City Manager's Report.

Mr. Hughes reported on the following:

- Mumfest will be held this weekend.
- City ordinances prohibit temporary signage from being placed in the right-of-way. Signs placed by several groups were removed over the past week, and one of the groups took to social media with comments that the City does not support their endeavors and does not support breast cancer awareness and similar events. The City does support these causes, but is obligated to follow and consistently enforce its ordinances. Signage in a right-of-way is a safety issue, as it obscures a motorist's line of sight, etc. There are no exemptions for nonprofits. Sandwich board signs are also regulated by ordinance.

19. New Business.

Alderman Kinsey

A couple of calls were made to Alderman Kinsey about numbers being removed from the New Bern High School Championship roadside signs. He was unaware of what the callers were referencing. Mr. Hughes stated he made a decision to remove the numbers without informing the Board. In hindsight, he should have reached out to the entire Board.

Alderman Brinson

Last month under Request and Petition of Citizens, a gentleman suggested the City's 2025 election be moved to an even year to save taxpayer money. After researching and speaking with Susan Williams, Director of Craven County Elections, Alderman Brinson confirmed every municipality in Craven County except New Bern has moved their elections to an even year. That means if New Bern continues with an election in 2025, it will solely pay for all associated costs. The previous Board discussed this topic a couple of years ago, at which time the Craven County Board of Elections estimated the City's cost for the 2021 general election at \$46,810 and runoffs for the mayoral and Ward 1 seats at \$26,570, for a total of \$73,380. The estimate significantly dropped to \$5,300 if the City were to move its election to an even year. That Board decided not to move the election, but a delay in the census data delayed the election until 2022 anyway. The cost was \$6,043.02 for the general election and \$28,929.42 for the mayoral, Ward 1 and Ward 2 runoffs. If the election is held in 2025, this Board's term will only be 3 years and 3 months. If the election is moved to 2026, the Board's term will be 4 years and 3 months. Alderman Brinson asked if there was consensus to give the City Manager and City Attorney direction to investigate options for moving the election to an even year, specifically 2026, and the savings that would yield. No one was opposed to hearing what options are available.

Mayor Odham

There was a nice turnout for the City Hall annex ribbon-cutting, which includes an elevator. The project was money well spent on a structure that will last for generations.

20. Closed Session.

Alderman Royal made a motion to go into closed session pursuant to NCGS §143-318.11(a)(4) to discuss the potential expansion of a business and NCGS §143-318.11(a)(6) to discuss a personnel matter, seconded by Alderman Prill. The motion carried unanimously, time being 9:06 p.m.

21. Adjourn.

Alderman Royal made a motion to adjourn, seconded by Alderman Kinsey. The motion carried unanimously 6-0, time being 9:56 p.m.

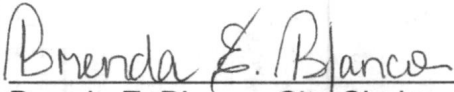
The attached documents are incorporated herewith and are hereby made a part of these minutes.

NOTE: For additional details and information on the Board of Aldermen meetings, please visit the City of New Bern's website at www.newbernnc.gov. Video and audio recordings of the meeting have been archived.

Minutes approved: October 24, 2023



Jeffrey T. Odham, Mayor



Brenda E. Blanco, City Clerk