



**BOARD OF ADJUSTMENT  
VARIANCE HEARING ♦ JANUARY 23, 2007**

**MINUTES**

The annual organizational meeting and variance hearing of the Kure Beach Board of Adjustment was held January 23, 2007, beginning at 7:30pm at Kure Beach Town Hall, located at 117 Settlers Lane, Kure Beach, NC. A quorum was present.

**MEMBERS IN ATTENDANCE:**

Betty Swann, Chair  
Anne Brodsky  
Norm Collins  
Harry Humphries, Vice Chair  
Charles Allo, alternate

**MEMBERS ABSENT**

John Gordon  
Mark Galizio, alternate

**STAFF IN ATTENDANCE:**

Town Clerk Nancy Avery  
Building Inspector John Batson  
Town Attorney A. A. Canoutas

Court reporter services provided by Overby Court Reporting.

**CALL TO ORDER**

Chair Swann called the meeting to order at 7:40 pm.

**ELECTION OF CHAIR AND VICE CHAIR**

Member Allo **MADE THE MOTION** to retain current chair Betty Swann and current vice chair Harry Humphries until January 2008. Member Collins seconded the motion. **THE VOTE OF APPROVAL WAS UNANIMOUS.**

**APPROVAL OF ANNUAL REPORT**

Member Brodsky **MADE THE MOTION** to accept the annual report as presented with no changes. Member Humphries seconded the motion. **THE VOTE OF APPROVAL WAS UNANIMOUS.**

Said annual report is herein incorporated as part of these minutes as attachment A.

RULES OF PROCEDURES

Member Humphries MADE THE MOTION to accept the Rules of Procedure with no changes. Member Allo seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS.

Said Rules of Procedure is herein incorporated as part of these minutes as attachment B.

REVIEW OF MEMBERS TERMS

Members Brodsky and Gordons' terms expire January 2007.

Member Allo MADE THE MOTION to re-appoint Member Brodsky and Member Gordon for another three year term. Member Humphries seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS.

APPROVAL OF MINUTES

Member Brodsky MADE THE MOTION to approve the minutes from the November 28, 2006 meeting with no changes. Member Collins seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS.

OPENING OF HEARING/POLL OF MEMBERS

Chair Swann opened the hearing at 7:50 pm. Chair Swann explained to all present that the Board of Adjustment is a quasi-judicial administrative body, that members may only consider substantial, competent and material evidence for factual determination, that hearsay and opinion testimony may not be considered in findings of fact, that applicant must prove that ordinance standards have been met and called for a poll of members regarding conflict of interest.

Anne Brodsky – no conflict  
Harry Humphries – no conflict  
Betty Swann – no conflict  
Charles Allo – no conflict  
Norman Collins – no conflict

ADMINISTRATION OF OATH

Chair Swann administered the oath to the following signed in to testify:

John Batson, Building Inspector  
Steve Stefanovich, applicant  
Matt Nichols, attorney for applicant  
John Zabriskie, builder for applicant  
Patrick Bristow, surveyor for applicant

TESTIMONY, FINDINGS OF FACT AND BOARD DECISION

A transcript of the testimony, cross examination, findings of fact and Board decision is herein incorporated as part of these minutes as attachment C.

Applicant and his attorney, builder and surveyor testified:

- applicant purchased the property in June 2004 and construction was completed in October 2005
- between the survey to stake the four corners and the survey to stake the footprint of the building, an error occurred causing the building to be out of compliance with setbacks for a corner lot
- the error wasn't noticed until the building was completed
- applicant received a letter from the Building Inspector for Kure Beach stating that the front and side setbacks were not in compliance and the Certificate of Occupancy would not be issued
- the bulk of the front yard is the right of way for Alabama Avenue (major thoroughfare)
- confusion existed over whether the right of way on Alabama Avenue should have been 50 feet or 90 feet. The plot plan showed a 50 foot right of way. A map recorded in 1913 stated the right of way should be 90 feet
- placement of house is consistent with other properties on the east side
- house is in low traffic area, doesn't block view
- house is too close to front setback at 13.8 feet when it should have been 20 feet
- house is too close to side setback at 5 feet when it should have been 10 feet
- another surveyor did an "as built" survey in the fall of 2006 and determined the setback issue
- setback non-compliance was not intentional, but human error - house would fit envelope
- neighborhood has been improved
- no safety issue exists due to set back non-compliance
- issue has created financial burden, contract exists on one-side of house, house can't be sold
- the orientation of the house is correct – not blatantly obvious that setbacks aren't correct

Building Inspector John Batson testified:

- he was not the building inspector at the time the house was built
- there was no record that a Certificate of Occupancy (CO) was issued
- there was no indication in the file as to why CO wasn't issued
- when he learned of the setback problem, he informed the builder that a CO could not be issued
- house was built on a corner lot requiring a 10 foot setback off the minor thoroughfare – setback is 5 feet
- house was built on a corner lot requiring a 20 foot setback off the major thoroughfare – setback is 13.8 feet

Testimony was then closed by Chair Swann.

RECESS CALLED AT 8:45 P.M.

HEARING RESUMED AT 8:55 P.M.

FINDINGS OF FACT

Board members comments during discussion:

- concerned that no covenants or condominium documents were presented to Town
- property could have been in compliance – sufficient square footage existed
- water/sewer line and hydrant placement and position of stairs and deck should have been noticed as indication of problem
- if variance granted, house becomes conforming
- circumstances beyond control of applicant
- applicant depended on professionals
- didn't see evidence presented that applicant intentionally tried to manipulate to build something bigger than allowed
- a unique situation exists for this particular house
- concerned that original surveyor did not appear to testify
- concerned that town's building inspector doesn't do on-site survey until pilings in ground

After discussion among the members of the Board, Chair Swann called for a vote on the following five questions used in determining whether to grant variance or deny.

Question No. 1:

Did applicant follow ordinance requirements of Chapter 19 (Zoning)?

A vote of four affirmatives and one abstention was received as follows:

Chair Swann – affirmative  
Vice Chair Humphries – affirmative  
Member Brodsky – affirmative  
Member Collins – affirmative  
Member Allo – abstention (affirmative\*)

Question No. 2:

Does the evidence indicate that the hardship of which the applicant complains result from unique circumstances related to the applicant's land and is it the result of the applicant's own actions?

A vote of four negatives and one affirmative was received as follows:

Chair Swann – negative  
Vice Chair Humphries – negative  
Member Brodsky – negative  
Member Collins – negative  
Member Allo – affirmative

Question No. 3:

Does granting a variance preserve the spirit and keep harmony with the general purpose and intent of the ordinance?

A vote of four affirmatives and one abstention was received as follows:

Chair Swann – affirmative  
Vice Chair Humphries – affirmative  
Member Brodsky – affirmative  
Member Collins – affirmative  
Member Allo – abstention (affirmative\*)

Question No. 4:

In granting a variance, is the public safety and welfare assured?

A unanimous affirmative vote was received.

Question No. 5:

In granting a variance, will substantial justice be done?

A vote of four affirmatives and one abstention was received as follows:

Chair Swann – affirmative  
Vice Chair Humphries – affirmative  
Member Brodsky – affirmative  
Member Collins – affirmative  
Member Allo – abstention (affirmative\*)

\* Note: as per NC General Statute 160A-75. Voting.

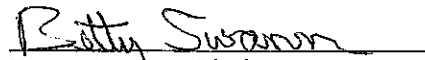
No member shall be excused from voting except upon matters involving the consideration of the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14-234, 160A-381(d), or 160A-388(e1). **In all other cases**, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, **shall be recorded as an affirmative vote**

DECISION/VOTE OF THE BOARD:

IT IS THE DECISION OF THE BOARD, UNANIMOUSLY, TO GRANT A VARIANCE FROM THE LITERAL PROVISIONS OF SECTION 325 OF THE KURE BEACH ZONING ORDINANCE (CHAPTER 19) FOR 607A AND 607B, KURE BEACH.

ADJOURNMENT:

Member Brodsky MADE THE MOTION to adjourn the hearing at 9:40 pm. Member Collins seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS.

  
Betty Swann, Chair

ATTEST:   
Nancy Avery, Secretary