

BOARD OF ADJUSTMENT
MEETING MINUTES ♦ FEBRUARY 23, 2010

MINUTES

A meeting of the Kure Beach Board of Adjustment was held February 23, 2010, beginning at 7:30 pm at Kure Beach Town Hall, located at 117 Settlers Lane, Kure Beach, NC. A quorum was present.

MEMBERS IN ATTENDANCE:

Harry Humphries, Chair
Anne Brodsky
John Gordon
Peter Boulter

MEMBERS ABSENT

Charlie Allo

STAFF IN ATTENDANCE:

Board of Adjustment Attorney Holt Moore
Commissioner Liaison Barry Nelder
Secretary Aimee Zimmerman

CALL TO ORDER

Chairman Humphries called the meeting to order at 7:28 p.m.

Chairman Humphries advised that at the Town Council meeting in January, the Council elected to follow the policy of the Board of Elections when it comes to the question of residency. Additionally, the Council advised that residents could not serve as Chair on more than three committees at one time. Council further stated that any applicants to boards such as P&Z and BOA that the Council will be conducting the interviews. As such, Tony Garibay's appointment was not accepted.

APPROVAL OF MINUTES

ACTION: Member Brodsky made a motion to approve the minutes from the January meeting. Member Boulter seconded the motion. The motion carried unanimously

ELECTION OF VICE CHAIR

ACTION: Chair Humphries made a motion to elect Member Brodsky as Vice Chair. Member Boulter seconded the motion. The motion carried unanimously.

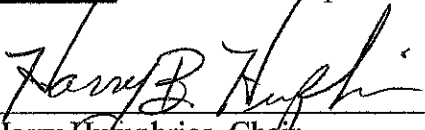
ACCEPTANCE OF RESIGNATION OF MEMBER GORDON

Member Gordon submitted his resignation from the Board of Adjustment. Chair Humphries and the Board extended their gratitude for his service to the Board. Member Gordon stated his pleasure in serving on the Board.

Member Gordon was excused from the meeting at 7:34 p.m.

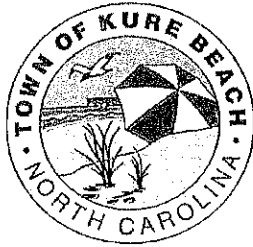
ADJOURNMENT

ACTION: Chair Humphries adjourned the meeting at 7:35 p.m.



Harry Humphries, Chair

ATTEST: 
Aimee Zimmerman, Secretary



BOARD OF ADJUSTMENT
TRAINING SESSION ♦ FEBRUARY 23, 2010

A training session of the Kure Beach Board of Adjustment was held February 23, 2010, beginning at 7:45 pm at Kure Beach Town Hall, located at 117 Settlers Lane, Kure Beach, NC. A quorum was present.

MEMBERS IN ATTENDANCE:

Harry Humphries, Chair
Anne Brodsky
Peter Boulter
Tony Garibay

MEMBERS ABSENT

Charlie Allo

STAFF IN ATTENDANCE:

Board of Adjustment Attorney Holt Moore
Commissioner Liaison Barry Nelder
Secretary Aimee Zimmerman

Chris May, Cape Fear Council of Government, introduced himself and addressed the Board.

- Board of Adjustment was created as a quasi-judicial committee.
- Some municipalities operate under Dillon's Rule.
- Under Dillon's Rule, the municipalities are ruled by State Statute which set the "basics" while the local government's ordinances fine tune the procedures for the Board. Dillon's Rule, by definition, is the doctrine that a unit of local government may exercise only those powers that the state expressly grants to it, the powers necessarily and fairly implied from that grant and the powers that are indispensable to the existence of the unit of local government. (Virginia is a Dillon Rule state. The opposite of the Dillon Rule doctrine is home rule, which allows for greater local government self-determination.)"
- The Kure Beach Board hears appeals from the Building Inspector, variances and special permits.
- In variances, hardships clearly go with the land and not the land owner.
- Interestingly, the Board is empowered to determine boundaries such as a property line that was obstructed by a tree and fence which are no longer there.
- Boards of Adjustment are authorized through N.C.G.S. 160A-388.
- Rich Ducker is the primary contact through the NC School of Government. They also employ staff attorneys well versed in the zoning law.

- Town Code Chapter 19 is also a good reference as to the powers and duties of the Board of Adjustment.
- In his opinion, as it pertains to residency, there is no law that prohibits allowing non residents from serving on a BOA. However, a Town can decide to change their rules. At this time, Chapter 19 states that a member must be a resident. Additionally, Council has decided that they will follow the Board of Elections determination on residency.
- Member Brodsky questioned the types of applications received. Mr. May stated that the Board should rely on Town staff to determine whether the case should be forwarded to the Board in the first place.
- Member Boulter asked about a pre-hearing process. That process begins with the Building Inspector who reviews the documents for completion and relevance.
- When it comes to attorneys testifying on behalf of their client, they must be sworn in as anyone else would be otherwise the Board does not have to consider their testimony.
- The Board is subject to open meetings law.
- There have been times while the Board is deliberating and someone in the audience who testified earlier tries to clarify their testimony or expound further. Mr. May stated that that is not allowed and the Board cannot consider anything stated once the testimony has been closed.
- The initial vote by the Board should be whether the application is complete.
- The Board must be fair and impartial in their decision making.
- Decisions can be postponed but not indefinitely. It must be done within a reasonable amount of time. Meetings must then be recessed, not adjourned, until the next available time to meet.
- Mr. May encouraged the Board to consider if the applicant's request is truly legitimate keeping in mind that the Board must protect the ordinance.
- In the case of a variance, it is required that there is a four/fifths vote. However, according to the State, in determining a four/fifths quorum, if someone has recused themselves they are not added into the number to determine the quorum.
- If there are less than four members present, you must go with the majority of the Board presiding. If there are only three, a quorum would be 2/3.
- The Building Inspector is the first line of defense to the Board of Adjustment.

ADJOURNMENT

ACTION: Member Brodsky made a motion to adjourn the meeting. Member Boulter seconded the motion. The motion carried unanimously.

Meeting adjourned at 8:47 p.m.