

BOARD OF ADJUSTMENT
MEETING MINUTES ♦ May 22, 2012

MINUTES

A meeting of the Kure Beach Board of Adjustment was held May 22, 2012, at Kure Beach Town Hall, located at 117 Settlers Lane, Kure Beach, NC for the purpose of training. A quorum was present.

MEMBERS IN ATTENDANCE:

Peter Boulter, Chair
Harry Humphries
Tony Garibay
Dolores Coe

MEMBERS ABSENT:

Sandra Whaley

Attorney Holt Moore was not requested to attend

STAFF ATTENDANCE:

John Batson, Building Inspector/Code Enforcement Officer - Absent
Secretary, Josie Fitzgerald

CALL TO ORDER:

Chairman Boulter called the meeting to Order at 7: 02 pm

APPROVAL OF AGENDA (Feb. 28, 2012):

MOTION: Member Humphries

SECOND: Member Garibay

VOTE: Unanimous

APPROVAL OF THE MINUTES (Meeting February 28, 2012):

MOTION: Member Garibay moved to approve the minutes with the change to designate Dolores Coe as *Vice Chair* instead of *Co-chair*.

SECOND: Member Coe

VOTE: Unanimous

OLD BUSINESS:

A. Alternate Members- Welcome and Oaths of Office Administered by Town Clerk

Nancy Avery

1. Edgar "Bryant" Bass
2. Gail Carelli

B. Rules of Procedure

The Rules of Procedure were presented for review. Members agreed that the revisions were consistent with the discussion at the February meeting. The amendments will be presented for a vote at the next meeting in compliance with the Rules.

C. Legal Council Attendance:

The issue at hand was when should the BOA request attorney to attend meetings. There was discussion about the benefits of having the attorney present. It was discussed that the attorney should attend all hearings and meetings but may not be required to attend training sessions.

- Having the attorney present at training sessions would eliminate the question of accuracy of context from a legal standpoint.
- Cost was a consideration—training sessions are limited during the year
- Training conducted by Town employees will be handled differently than when conducted by an outside source to avoid any conflict with the law and the interpretation of Town employees.
- Legal advice and guidance is important.
- Town Council does not have a problem with attorney attending all meetings and training sessions.
- It was important to avoid any conflict of interests between the BOA and the building inspector.

MOTION: Member Garibay moved to follow the procedure to request attorney's attendance at all hearings and meetings, and specifically request attorney's attendance subject to the presentation of each scheduled training session.

SECOND: Member Humphries

VOTE: Unanimous

Chairman Boulter turned the training segment over to Don Eggert from the Cape Fear Council of Government for presentation.

- Introductions by members and alternates
- Handout was presented
- There are three areas to be considered—NC General Statutes, Town Ordinances and case studies
- NC Gen Stat., Chapter 160A—The State law that gives municipalities the right to do what they do.
- Sec. 160A-388 BOA-- A municipality may designate a planning board or governing board to perform any or all of the duties of a board of adjustment. There are options of who may be designated to the duties of a board of adjustment.

- BOA - qualifications, duties, and terms were discussed.
- The BOA is a forum to appeal a decision by the Building Inspector.
- Every decision of the board shall be subject to review by the Superior Court.
- BOA is involved when practical difficulties or unnecessary hardships would result from carrying out the strict letter of a zoning ordinance.
- Hardship goes with the land and when effective use of the land is prohibited.
- A member of the board exercising quasi-judicial functions shall not participate in or vote on any quasi-judicial matter that would violate affected persons' constitutional rights to an impartial decision maker.
- Discussion on what is deemed to be reasonable--depends on common sense--definition in accordance with reason, not extreme or obsessive.
- It takes 4/5 vote to override the decision of the building inspector
- Discussion on conflict of interest. No discussion of a case among members prior to a hearing is permitted. If a member has any connection or relationship with an applicant for a hearing, there could be a conflict. A member needs to excuse himself if there is even a slight chance of a conflict-- perception can be very important.

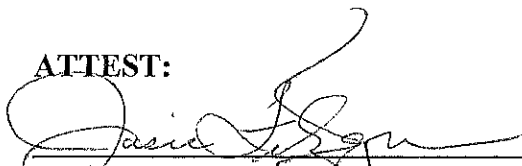
There was discussion regarding several case studies and issues such as what is determined to be a hardship, ordinance interpretation, qualifications of a variance, proper hearing procedure and the appeal process.

MOTION: Member Humphries moved to adjourn the meeting
SECOND: Member Coe
VOTE: Unanimous

Meeting adjourned at 8:35 p.m.



PETER BOULTER, Chair

ATTEST:


JOSIE FITZGERALD, Secretary