

KURE BEACH TOWN COUNCIL PUBLIC HEARING
JULY 29, 2008

MINUTES

On Tuesday, July 29, 2008, the Kure Beach Town Council held a public hearing for the purpose of receiving comments on “the flexibility of applying any part of any inhabitable structure over the 35 foot height limit, which may result in an amendment to the zoning ordinance”.

COUNCIL MEMBERS PRESENT:

Mayor	Mac Montgomery
Mayor Pro Tem	Jim Dugan
Commissioner	Dean Lambeth
Commissioner	Barry Nelder (arrived at 6:11pm)
Commissioner	Jim Vatr

COUNCIL MEMBERS ABSENT:

None

STAFF PRESENT:

Town Administrator	Michelle James
Building Inspector	John Batson
Fire Department	Harold Heglar
Town Clerk	Nancy Avery

Town Attorney A. A. Canoutas and Planning and Zoning Attorney Holt Moore were in attendance. A quorum of the Council was present.

Call to order

Mayor Montgomery called the meeting to order at 6 pm stating:

- The purpose of the hearing is to receive public comments on “the flexibility of applying any part of any inhabitable structure over the 35 foot height limit, which may result in an amendment to the zoning ordinance”.
- Notice of the public hearing was posted at Town Hall on June 27, 2008 and published in the Island Gazette newspaper on July 2, 9, 16, and 23, 2008.
- A state law was passed in 2006 that states “no building erected within the corporate limits of the Town of Kure Beach may have a height in excess of 35 feet above ground level unless the building was erected before the effective date of this act. Variances of the height limitation shall not be granted. The height limitation created by Section 1 of this act does not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy”.
- The Town’s ordinance states “chimneys, cooling towers, elevators, bulkheads, scenery, lofts, monuments, domes, spires, parapet walls, and masonry mechanical appurtenances may be erected, to any height in accordance with existing or hereafter adopted ordinances”.

- The Planning and Zoning Commission is requesting certain exceptions be granted only for the B1 district.

Opening of the public hearing and receipt of public comments

Mayor Montgomery opened the public hearing at 6:06 pm.

1) Jim Smith, resident at 929 General Whiting Boulevard, stated:

- The hand out sheet states that Planning and Zoning doesn't want to address uncovered roof decks at this time. I think we should address all exceptions at one time.
- If you allow this roof deck business above 35 feet you are going to get people competing with each other.
- You can't tell a person that wants to make a deck ADA compatible, that they can't.
- Once you get the 35 foot deck going you are creating more problems. The Town never should have allowed it and should nip it in the bud.
- Roof decks are an abomination – we fought for 35 feet and no more.
- Please end this once and for all.

2) Tim Fuller, resident of 133 Settlers Lane, stated:

- I am here to speak in favor of the 35 foot height limit.
- During the election two years ago, height limit was a big issue. It was an exasperating time because folks would quote one sentence from the Land Use Plan and use it to do what they wanted to do which was to build an eleven story building or 500 space parking deck, so we went to Raleigh. (General Assembly)
- As long as there have been ordinances in Kure Beach, there has been a 35 foot height limit. We were concerned that three council members could change that, so we went to Raleigh to propose a local bill to limit the local building height limit to 35 feet. We were clear that we wanted to preserve the small town atmosphere, and we were equally clear that we didn't want it to be a death sentence for the business district.
- Council needs to be careful to keep in mind that those exceptions were in the ordinance pre-dating the state bill and they are necessary.
- Value of property in Kure Beach is extremely high. In order for a business to justify building they have to get the maximum footage they can.
- Because of the small size of our lots, there is a need to put condensing units on top of buildings. This is a common practice and a reasonable thing to put condensing units, elevator shafts, etc. on top of buildings and it does not detract from the original purpose of the 35 foot height limit to protect the Town's character.
- Unless we are willing to say no more businesses or tell people they can't have chimneys, we have to deal with exceptions.
- The Town's ordinances are inadequate to deal with exceptions. There is no way to define or approve them, and this may result in a law suit. When we turn someone down, they are going to take us to court and a judge will say this law unduly restricts the right of property owners.

- There is nothing in the ordinance now that allows roof decks at 35 feet or above. I don't know how they are being approved. This Council needs to tell the Building Inspector to stop allowing decks above 35 feet.
- Don't go back to Raleigh (General Assembly). Anyone that worked with us on the original bill knows what a close call it was to get it through. Don't count on success. There is no control once it gets to Raleigh. A bill writing committee writes the bill. Some legislators told us this was a local matter and not to bother them with it.
- This Council has the power to deal with concerns about height limit exceptions by changing definitions such as the definition in the current ordinance that talks about 'scenery lofts' – redefine it to not mean roof decks.
- The original proposal from Planning & Zoning is lacking because there is no review process established. It is up to Council to decide the review process.
- I advise being careful in allowing exceptions because they are in the state bill.
- If you are not careful in dealing with exceptions that may open up the Town to a lawsuit.

Mr. Fuller handed out a copy of proposed language to amend the zoning ordinance. Said proposed language is herein incorporated as part of these minutes.

Questions to Mr. Fuller from Council:

Commissioner Nelder:

a) There are some things here that go against previous statements you just made. You said scenery lofts above 35 feet should be eliminated?

Mr. Fuller replied that the current ordinance allows scenery lofts and there is nothing in the current ordinance that prevents us from eliminating decks. If you want to eliminate them you need to put language in the ordinance to do so.

b) Couldn't a competent architect or builder keep a parapet wall underneath 35 feet?

Mr. Fuller replied that parapet walls exist now on buildings that were built before the ordinances were enacted. We would have to say to people that they can't do that now and we would be looking at a lawsuit.

c) I was led to believe by Planning and Zoning that we were talking strictly about the B1 district – now you are saying we are talking about the entire town. Let's get some definition in here about the B1 and not such a broad base.

Mr. Fuller stated:

- The fixation on parapet walls is incorrect. An engineer and architect can design anything, but if you want to build a building where nothing exceeds 35 feet in height, even a parapet wall, it means habitable space will be significantly below that. Are you willing to say no parapet walls, and as a consequence of that we will never have another new business built in Kure Beach?

- A deck is not an exception in the current ordinance. There is nothing in the current ordinance that keeps Council from limiting decks.
- A parapet wall is an exception in our current ordinance. In order to build a financially viable business in the B1 district, we may have to allow an exception. It is not giving anyone carte blanche. It's up to Council to decide who the ultimate arbiter is. If someone came to Council with plans for a building that would substantially increase the tax base in the business district that called for parapets walls that extend above 35 feet for safety and fire protection, why would you categorically deny it?
- You can't talk about just the B1 district because we have residential/business districts and other districts.

Commissioner Vattr:

a) With your past background, how does what you suggest impact the Land Use Plan?

Mr. Fuller replied that there are numerous things in the Land Use Plan, but people like to choose certain things in the plan to use when arguing a particular case. One of things it says is that we want a vibrant and viable business district. When we went to the state legislators, we thought you could build a profitable business within the 35 foot height limit, but that might mean you have to put the air conditioner on the roof.

b) In your opinion, does your proposed language fit with the Land Use Plan and won't require a change to the plan?

Mr. Fuller responded yes, that's correct.

c) In your opinion, if we were to eliminate anything over 35 feet, would that be detrimental and limit potential significant development in the B1 district?

Mr. Fuller replied that the exceptions listed in the current ordinance and state statute are reasonable and not detrimental to what we are trying to achieve. If Council doesn't come up with a reasonable way to deal with the exceptions, the Town is going to end up in a lawsuit. The Supreme Court of North Carolina says you have to allow a person to make a reasonable return on their property. We already have exceptions, so if you limit any means to take advantage of those exceptions, the Town is going to be sued. I think the exceptions are reasonable and necessary to allow a person to get a reasonable return on their investment.

d) From a business standpoint, in your opinion, would we as a town suffer in not attracting developers to help further develop the B1 district?

Mr. Fuller responded:

- Yes, the Rolling Surf Motel is a prime example which was a thorn in our side for years. How can you build a business in Kure Beach that can be economically feasible when the building cost is about \$1000 per square foot? If a developer can't prove that there is a return on the investment, he can't get financing.

- Another example is if someone wanted to build a three story building with a restaurant on the first floor which needs an exhaust opening on the roof and we say nothing can go above 35 feet, we will lose the business.

Commissioner Lambeth:

a) Your comment on item three of your proposed language that says parapet walls may exceed height limit to the extent necessary to meet state building code. This is another can of worms because in a lot of cases parapet walls aren't necessary, so each case should be reviewed.

Mr. Fuller responded:

- There may be ways to design parapet walls that won't be economically feasible. Commercial buildings aren't reviewed by our Building Inspector. The county does the review and they look at building code not local ordinances.
- I recommend the ultimate arbiter should be Council. My recommendation is that you set up a special use permit process that would be used to review a design before approval.

Commissioner Lambeth stated that the Pier View conceptual drawing had a deck on top of it and I think we all voted to approve the plans. I think we should have a review process to take these things into consideration.

Mayor Montgomery asked Attorney Moore for an opinion on interpretation on roof top decks.

Attorney Moore, attorney for Planning and Zoning, stated that his opinion is that if a deck is to be used for human occupancy, not to live or sleep there, but to use it, then that triggers the occupancy aspect and the exceptions in the state law say none of the exceptions include human occupancy, so that would exclude decks.

Mayor Montgomery asked Building Inspector Batson for his interpretation of roof decks

Building Inspector Batson stated that Attorney Moore's opinion makes sense, but he would like direction from Council.

Commissioner Nelder stated that Planning & Zoning did address roof decks several meetings ago and talked about keeping the railing deck at the 35 foot height limit.

3) Tyler Newman, representative of the Cape Fear Home Builders Association and the Business Alliance for Sound Economy stated they are supportive of clarifying exceptions. The state law is pretty clear in enabling HVAC and parapet walls, and having some type of oversight is needed. It is good to enable people to come in and build exciting things in Town and take the tax burden off the folks.

4) Alan Votta, member of the Planning and Zoning Commission, stated:

- A steel and concrete built hotel with a floor to ceiling height of 8.9 feet with a 35 foot height limit comes out to be a four story hotel with a flat roof. It will not work without exceptions, because the elevator will pop up through the roof and it will look like a shoe box. Exceptions are important.
- The B1 study done last year cited an example of a two story hotel built across the street from the ocean, at the 35 foot height. There would have been an expected 24 % return on the investment after five years.

Commissioner Lambeth stated that the B1 study also said because of restrictions for parking for a hotel, the footprint above three stories was not feasible because parking space was not available. One of the biggest stumbling blocks was parking.

5) Jim Schutta, chairman of the Planning & Zoning Commission, stated:

- Planning & Zoning's job was to look at the zoning code and make recommendations.
- I have been on Planning & Zoning Commission for two years.
- I'm not here to play politics or judge people, but to look at the facts and what the people want.
- My background is in commercial building and I'm familiar with using space adequately.
- When we saw the exceptions to the 35 foot height limit, we thought it was open to too much interpretation for things such as scenery lofts. Our goal is to put things in the zoning ordinance that can be interpreted well and not open to lawsuits.
- We took out scenery lofts because we agree with what people said and saw no reason for decks to be over 35 feet.
- We felt restrictions of 35 feet would inhibit the business district and the reason for exceptions is to allow some reasonable growth.
- The only problem we saw with residential was the chimneys – everything else was commercial related.
- We need to know our codes better and understand what people are trying to do so we can make better decisions about whether a business is viable.
- We understand 35 feet height is a big issue, but we are trying to make this a viable business district – if not, we will become a bedroom community to Carolina Beach and I don't want that.
- We are trying to defend what we have today in a fair way that is equitable to everyone.

Commissioner Lambeth asked if we can legally delete anything from the language in the ordinance, such as scenery lofts.

Town Attorney Canoutas replied that you can't delete anything in section two of the state law. There are some things that are in our ordinance that are not in the state law. The state law assures that the 35 foot height limit can't be changed without General Assembly approval.

Commissioner Nelder stated:

- Changing the wording was my concern. The wording changed from what was in the state law. All of sudden we had parapet walls instead of what was in the state law. I thought I was told by both attorneys that we don't have to include paragraph two of the state law in our ordinances.

Commissioner Nelder was recognized as a citizen of Kure Beach for the purpose of addressing Council.

6) Mr. Nelder, resident, stated:

- I have a diagram that shows some different elevations in the Town.
- If you look at the manhole at the bottom of the pier, it is at a plus 16 which is fairly close to the floor level you would have in most of the buildings in that area. The minimum floor level above sea level.
- On the back side of Third Street, the highest elevation in the two blocks of the business district is plus 24. I'm proposing not going above the 35 foot height above the back limit already there, but bringing the same elevation of plus 59 with the roof level and going all the way out to the front of Atlantic Avenue. That would allow you five stories, I think, along Atlantic Avenue and four stories along Fort Fisher. This would be a roof line benchmark. The benchmark would be the same on Third Street, the back side of the business district. I would like a datum of plus 59 above sea level for the roofs only in the B1 business district. I want Planning and Zoning to discuss this proposal.

Mr. Nelder handed out a diagram which is herein included as part of these minutes.

Mayor Montgomery stated that the next time this topic will be discussed will be at the August 19, 2008 Council meeting and at the next Planning & Zoning Commission meeting on August 5, 2008 at 7:30pm.

7) Francis Regan, resident, stated that from what I'm hearing my common sense says that Mr. Nelder's proposal is to use a land elevation to determine height of buildings that could be allowed on Atlantic Avenue. The law approved by the General Assembly plainly states no building erected within the corporate limits of the Town of Kure Beach may have a height in excess of 35 feet above ground level. It makes no sense to use the ground level of Fourth Street to determine height of a building in the B1 district.

8) Jim Smith, resident, stated he still wants to hear that roof decks won't be approved to be built above 35 feet.

Mayor Montgomery stated Council can't take action tonight, but this topic will be on the August Council agenda.

9) Alan Votta, member of the Planning and Zoning Commission, stated that the discussions Planning & Zoning has had at meetings with Attorney Moore have been about railings being above 35 feet.

Mayor Montgomery handed over the meeting to Mayor Pro Tem Jim Dugan so he could speak as a citizen.

10) Mac Montgomery, resident at 642 S. Fourth Avenue, stated:

- I am a tax payer in Kure Beach living on a fixed income as are others.
- I want to see my town grow and I am willing to pay my share of it.
- Each year our taxes have grown, fortunately our council has not raised our taxes.
- The county tax is going up three cents on the dollar.
- If we want services such as fire services and police protection, the question is how do we provide services without taxpayers bearing the burden. We don't have the luxury of annexation, but we can spread the tax burden by encouraging building investment. For example, Jack Mackerel's pays sales tax on every meal they serve, and the Town gets a share of the revenue. We use this revenue to offer services.
- I think we should do what we can to encourage businesses to open here. We are remiss if we don't take action to do that.

Commissioner Nelder stated it will require thinking outside the box, and we may need to possibly concentrate on the B1 district and a profitable B1 district.

Mayor Montgomery returned to the podium and resumed chairing the meeting.

Commissioner Lambeth was recognized as a citizen of Kure Beach for the purpose of addressing Council.

11) Dean Lambeth, resident of 226 Fourth Avenue, stated:

- This is a great place to live.
- The Town has cut to the quick our expenditures and department heads are squeaking each nickel.
- We need to be more frugal because projects we build have to be kept up. Any improvements cost money, even grants.
- Once projects are built, our taxpayers have to provide the up keep and we can't keep burdening them with it.

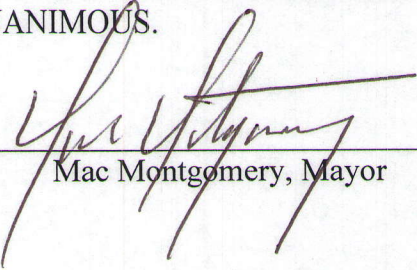
Mayor Montgomery stated the Planning & Zoning Commission meets the first Tuesday of each month and Council meets the 19th of August. Please feel free to email or drop by and express concerns with the Town Administrator or Council members.

Closing of the public hearing

Mayor Montgomery closed the public hearing at 7:30 pm.

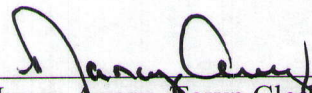
Adjournment

ACTION - Commissioner Vatrt MADE THE MOTION to adjourn the meeting at 7:36 pm. Commissioner Nelder seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS.



Mac Montgomery, Mayor



ATTEST: 

Nancy Avery, Town Clerk