



Town of Kure Beach

BOARD OF ADJUSTMENT MINUTES

Annual Organizational Meeting
Tuesday, February 26, 2019, 7:00pm

MEMBERS IN ATTENDANCE:

Harry Humphries
Anne Brodsky
Randy McNeely
Connie Mearkle

MEMBERS ABSENT:

Peter Boulter, Chairman
Tony Garibay, Vice Chair
Bryant Bass

STAFF ATTENDANCE:

Kathleen Zielinski, BOA Clerk
James Eldridge, BOA Attorney

I. CALL TO ORDER:

Member Humphreys called the meeting to order at 7:05 p.m.
He stated that two new alternate members, Randy McNeely and Connie Mearkle, were sworn in prior to the meeting and were sitting in for two of the absentees. Mr. Humphreys also stated that he was filling in for Chairman Boulter, who was also absent.

III. ADOPTION OF AGENDA

MOTION: Member Brodsky moved to adopt Agenda
SECOND: Member McNeely
VOTE: Unanimous

IV. APPROVAL OF MINUTES: (1/23/18)

MOTION: Member Brodsky moved to approve the minutes from January 23, 2018 as presented
SECOND: Member McNeely
VOTE: Unanimous

V. OLD BUSINESS:

None

VI. NEW BUSINESS:

Member Humphreys explained that the organizational meeting for election of officers, originally scheduled for January 24, 2019, would occur at this meeting. The January meeting had been cancelled for lack of quorum.

a. Election of Chairman and Vice Chair positions

MOTION – Member Brodsky moved to nominate Member Humphreys to serve as
Chairman for 2019

SECOND – Member McNeely

VOTE – Unanimous

MOTION – Chairman Humphreys moved to nominate Member Brodsky to serve as Vice
Chair for 2019

SECOND- Member McNeely

VOTE – Unanimous

Citing no hearings in 2018, Vice Chair Brodsky noted that to be a positive thing in that no action was needed. It indicates that the Code is well written and people are actually following it. Chairman Humphreys added that Building Inspector John Batson has been doing an excellent job in advising people about the process and code requirements.

b. 2018 Annual Report

The board reviewed the annual report for submission to council and noted little activity in 2018. No training was held, no cases were heard, the Rules of Procedure were amended and one alternate position was filled.

Motion – Vice Chair moved to approve the Annual Report for presentation to Council

Second – Member McNeely

Vote – Unanimous

c. Training Schedule

The question was raised about the need for training since there are no cases waiting to be heard. Attorney Eldridge offered to do whatever the board could see fit. When Member Brodsky noted that P&Z is making a lot of changes, Attorney Eldridge commented that P&Z's actions during 2018 do not foreshadow any matters for the BOA. Mr. Eldridge does not have anything new to offer because the statutes and case laws are the same. However, it was noted that, with two new alternate members, training could be beneficial.

The attorney then gave an overview of quasi-judicial proceedings and articulated how they differ from public hearings. He explained that quasi-judicial pertains to variances and appeals to a zoning officer's interpretations and is more of a trial than a public hearing. The appellant or applicant, staff members and witnesses are sworn in, testimony is taken, and witnesses are examined and cross-examined. To win appeal or get a variance, the burden is on the applicant through presentation of substantial material and competent evidence.

Attorney Eldridge went on to explain that if the property owner disagrees with the BOA decision, they have the right to appeal to the Superior Court. The court makes the final decision to approve or reject the variance or application. Therefore, there is a strong need to entertain only competent evidence and follow a clear outline for discussion. The Board of Adjustment has to make findings of fact and take evidence to make a decision. Training would help keep these concepts and others in mind during the course of the hearing,

Chairman Humphreys stated that he thinks it would be a good idea to have training, especially considering the addition of two new alternates. The training could be held during a regular meeting sometime in the coming year.

MOTION – Chairman Humphreys moved to hold a training session during one regularly scheduled meeting, with the date to be announced in the future

SECOND – Vice Chair Brodsky

VOTE – Unanimous

d. Regular meeting time

MOTION – Chairman Humphreys moved to keep the day for regular meetings on the fourth Tuesday of every month in which there is business to address

SECOND – Vice Chair Brodsky

VOTE – Unanimous

Discussion turned to changing the meeting time to earlier in the evening.

MOTION – Vice Chair Brodsky moved to have regular meetings start at 6:30 p.m.

SECOND – Member McNeely

VOTE – Unanimous

There was consensus by those in attendance to hold the next meeting on April 23, 2019 at 6:30 p.m.

e. Homeowner associations

Member McNeely requested clarification regarding the strength of town ordinances versus homeowner association rules. It was explained that typically, HOA rules are more

restrictive and, therefore, take precedence. The attorney read from a description of a 1956 North Carolina Supreme Court case establishing that the stricter covenants govern.

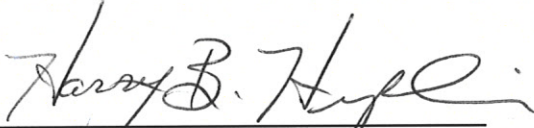
e. Overlay District

Attorney Eldridge informed the board that the Planning & Zoning Commission will be starting the process of taking public comments in preparation of developing a downtown overlay district to control how that district develops over time. He went on to explain the purpose and function of overlay districts, and the dynamics of special use permits.

VII. ADJOURNMENT:

MOTION: Member McNeely moved to adjourn the meeting
SECOND: Vice Chair Brodsky
VOTE: Unanimous

Meeting was adjourned at 8:00 p.m.



Harry Humphreys, Chairman

Attest: 

Kathleen Zielinski, Clerk

NOTE: These minutes reflect items considered and actions taken by the Planning & Zoning Commission and should not be considered a transcript of the meeting. An audio recording of the entire meeting can be found on the Town of Kure Beach website