



BOARD OF ADJUSTMENT
ORGANIZATIONAL MEETING
JANUARY 22, 2008

MINUTES

The Kure Beach Board of Adjustment held an organizational meeting on Tuesday, January 22, 2008. There was a quorum of the Board.

MEMBERS IN ATTENDANCE:

Betty Swann, Chair
Harry Humphries
Anne Brodsky
John Gordon
Charles Allo, Alternate
Peter Boulter, Alternate
Linda Cheshire, Alternate

MEMBERS ABSENT

None

STAFF IN ATTENDANCE:

Michelle James, Town Administrator
Nancy Avery, clerk

Attorney Holt Moore was in attendance.

CALL TO ORDER:

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

APPROVAL OF MINUTES - July 24, 2007

ACTION – Member Brodsky MADE THE MOTION to approve the minutes with one correction, the spelling of her name as “Ann” instead of “Anne” throughout. Member Allo seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS.

REVIEW OF MEMBERS TERMS

1. Expiration of the terms of Members Swann and Humphries

ACTION – Member Brodsky MADE THE MOTION to recommend to Council the re-appointment of both Members Swann and Humphries. Alternate Member Allo seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS.

2. Vacancy left by resignation of Norm Collins

ACTION – Member Brodsky MADE THE MOTION to table making a recommendation about the vacancy until the next meeting to have time to think about a nomination. Alternate Member Allo seconded the motion. MOTION WAS DEFEATED by a vote of 4 to 0.

ACTION – Member Humphries MADE THE MOTION to nominate alternate member Charles Allo to fill the vacancy left by Norm Collins. Member Gordon seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS.

Chair Swann stated that if Council approves Mr. Allo’s nomination, the term will be for three years.

ELECTION OF CHAIR

ACTION – Alternate Member Allo MADE THE MOTION for Member Swann to continue as Chair and Member Humphries to continue as Vice Chair. Member Brodsky seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS.

ANNUAL REPORT

Chair Swann stated that the yearly report listed three cases in error, but there were only two cases.

ACTION – Member Gordon MADE THE MOTION to approve the yearly report as presented with the correction of three cases to two. Member Brodsky seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS

RULES OF PROCEDURE

Member Humphries MADE THE MOTION to approve the Rules of Procedure as written. Member Brodsky seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS. Said Rules of Procedure are herein included as part of these minutes.

CODE OF ORDINANCES

The clerk handed out Code of Ordinance books updated through October 16, 2007 and advised members to review the changes.

QUESTIONS TO ATTORNEY HOLT MOORE:

Q. How do we work with the attorney doing a case?

A. I will volunteer information if I think it is needed and answer questions if requested.

TRAINING – COUNCIL OF GOVERNMENT

Chair Swann introduced Penny Tysinger of the Council of Government who was invited to provide a training session for board members.

Highlights from Ms. Tysinger’s training are listed below. A copy of the training packet is herein incorporated as part of these minutes.

- One of the problems with this type of board is that you don’t meet that often, which makes it hard to remember the rules and the process.
- Holt Moore is the attorney who will attend the meetings and advise the board.
- There is a new player in the form of the Town Administrator who will attend the meetings.

- The “Zoning Board of Adjustment” book published by the School of Government is an excellent reference and members should bring this book to each meeting.
- The Board Of Adjustment (BOA) has a narrow scope in what they can do. It is a quasi-judicial board that means they are kind of like a court. You are not expected to be attorneys, but there are requirements. You are like a judge in that you must come in with blinders on and seriously look at the information given to you that day. That is the only time you will hear the Town’s side and the applicant’s side. Witnesses may be called. You will probably know these people and there will be emotions because a person is talking about their property.
- You’ll receive some facts from the staff about the case, but there is no talking with anyone or sharing views before the hearing.
- If you somehow had someone approach you about the situation before you knew it was a case, you should acknowledge that you were approached prior to knowing about it, but you feel that you have no prior formed opinion and can be partial. It is important to say this up front. If you feel you have a conflict of interest or a pre-formed opinion, you may recuse yourself and an alternate will step in.
- I recommend that alternates come to the meetings. It is good training and you never know if a member has to recuse themselves and an alternate can step in.
- If a case is decided, can it ever come back? Yes, it can, if new facts were to enter into the case.
- If you are approached about a pending case, you should explain to the person that you are not allowed to talk about the case as a member of the board. This is called “ex parte” communication. You can go and see the property –don’t go on the property –and don’t engage in conversation.
- 4 of 5 members have to vote in favor of granting a variance or overturning a decision of the Building Inspector/Zoning Officer. If you don’t have 5 members sitting, but only 4, you can ask the applicant if they are willing to proceed with only 4 but all 4 must vote unanimously. You could give one continuance to another date when there will be 5 members.
- Conflict of interest is addressed in the Rules of Procedure. Be sure and look at that section. This should be raised at the hearing so there is a record in the transcript should the case be appealed.
- You can continue a meeting but must be very specific about the date and time of the continuance and don’t close the hearing. The minutes need to reflect the continuance. Don’t vote to continue until all the facts have been presented.
- The types of cases you may hear are a request for a variance from the zoning ordinance or an appeal of the decision of the Building Inspector/Zoning Officer.
- When hearing a case, sometimes you get into determining the meaning of a term. You need to always look to the definitions in the ordinance. If there is no definition then you use the standard dictionary definition.
- Courts will err in the favor of the property owner.
- You should take into consideration the interpretation of the Town staff/Building Inspector in saying that the applicant violated the ordinance when determining whether the applicant violated the ordinance or not.
- You can continue the case with the specification that certain criteria need to be brought – such as a survey.

- Board members may not talk amongst themselves when hearing a case. You must speak openly. All comments are on the record.
- You can talk to the Town staff and the attorney prior to the case to get clarification.
- It is not the board member's job to come up with the evidence. Your job is to ask the questions, to clarify.
- Board members are immune from liability.
- Hearings are not public meetings and certain rules have to be followed.

BOARD MEMBERS QUESTIONS:

1. Question 2 that we use when hearing a case often ends up with two separate answers instead of one. The question reads "Does the evidence indicate that the hardship of which the applicant complains results from unique circumstances related to the applicant's land and is it the result of the applicant's own actions".

Ms. Tysinger responded that it needs to be based on the land. Try to always keep that in mind.

Attorney Moore stated it needs to be peculiar to land and not the owner's fault.

2. Do all five questions each have to have a 4/5 vote in the affirmative to grant a variance? Is that correct? If they are not all in the affirmative, then we don't have to continue?

Attorney Moore replied that it is better to vote on each question individually to provide reasoning when preparing the order. I think it is better to go through all five questions anyway should the case be appealed.

CONSENSUS – Attorney Moore to review the questions used during the hearing and the application to make sure they are consistent.

ADJOURNMENT

ACTION – Member Gordon MADE THE MOTION to adjourn at 9:45 pm. Member Brodsky seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS.

Betty Swann, Chairman

ATTEST: _____
Nancy Avery, Clerk

NOTE: These are action minutes reflecting items considered and actions taken by the Board of Adjustment. These minutes are not a transcript of the meeting. Persons wishing to hear the recording of this meeting may request to do so by contacting the Town Clerk.