



**BOARD OF ADJUSTMENT**  
VARIANCE HEARING ♦ NOVEMBER 25, 2008

**MINUTES**

A variance hearing of the Kure Beach Board of Adjustment was held November 25, 2008 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, Vice Chair  
Betty Swann  
Anne Brodsky  
John Gordon  
Peter Boulter

MEMBERS ABSENT

Charles Allo

STAFF IN ATTENDANCE:

Building Inspector John Batson  
Town Attorney Holt Moore  
Secretary Aimee Zimmerman

Court reporter services provided by Peter Ruffin of Aurelia Ruffin and Associates

CALL TO ORDER

Vice Chair Humphries called the meeting to order at 7:29 p.m.

APPROVAL OF MINUTES

**ACTION: Member Brodsky MADE THE MOTION to approve the minutes from the September 23, 2008, meeting. Member Swann seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS.**

### OPENING OF HEARING/POLL OF MEMBERS

Vice Chair Humphries opened the hearing at 7:29 pm. Vice Chair Humphries explained to all present that the Board of Adjustment is a quasi-judicial administrative body, that members may only consider substantial, competent and material evidence for factual determination, that hearsay and opinion testimony may not be considered in findings of fact, that applicant must prove that ordinance standards have been met and called for a poll of members regarding conflict of interest.

Anne Brodsky – no conflict  
John Gordon – no conflict  
Betty Swann – no conflict  
Peter Boulter – no conflict  
Harry Humphries – no conflict

### ADMINISTRATION OF OATH

Vice Chair Humphries administered the oath to the following signed in to testify:

Randy Martin, applicant  
John Batson, Building Inspector

### TESTIMONY, FINDINGS OF FACT AND BOARD DECISION

A transcript of the testimony, cross examination, findings of fact and Board decision is herein incorporated as part of these minutes as attachment A.

Building Inspector Batson testified that

- Mr. Martin brought him a drawing a month or two ago.
- He inspected the site before considering whether to issue a permit. Said inspection also included setback requirements.
- He originally thought the sundeck was to be added to the rear of house.
- He was advised the proposed sundeck was going on the front of the house.
- After measuring the proposed site of the sundeck, he determined it would encroach on the front setbacks.
- He advised Mr. Martin that he would not issue the permit if the setback was encroached upon.
- He then denied the permit, citing Sec. 19-320 which stated “Any structure requiring a building permit shall not be permitted in the setback area with the exception of the following items: (1) Fence (2) Beach walkovers that are at least ten (10) feet to the rear of the building, and meet the 1996 Hurricane Replacement Standards”.

Randy Martin, applicant, testified that

- This process has been a learning experience for him.
- He went through the appropriate channels.

- When this matter was first discussed, he did not realize the Town could control his airspace in that 20 foot setback.
- He went to the MAG Group in Wilmington and drew the plans as a cantilevered sundeck. The sundeck would be attached to the existing deck.
- He has owned the house for three (3) years and planned to plant palm trees on both sides. This project was also to be attached to the existing deck and used for entertainment purposes.
- Nothing with this sundeck would physically touch the ground in the setback.
- The proposed sundeck does protrude into the setback by 2' 6".
- He has already measured for chairs and a table to fit in the space.
- He states that a precedent has been set in Kure Beach with other homes built since the ordinance was put in place.
- He doesn't understand why his permit was denied when others have been allowed.
- At 501 Settlers Lane, the stairs were in the setback.
- 432 4<sup>th</sup> Avenue North, the stairs were in the setback.
- 644 E Avenue, Units 1, 2 and 3 all had balconies in the setback.
- At 529 Fort Fisher Boulevard South, both the house and the stairs are in the setback. A measurement from the utility line to the front of the house totaled 16 feet.
- 625 Fort Fisher Boulevard South measured 15 feet to the house and the stairs.
- At 301 and 305 Fort Fisher, the buildings were both 17' from the utility line to the front of the structure and both had awnings in the setback. This is no different from his proposed sundeck.
- At 309 Fort Fisher, the awnings were 32 inches into the setback.
- A prime example is 337 Fort Fisher as the house was 20 feet from the property line but the balcony is 4 feet into the setback.
- 222 Fort Fisher, Units A & B, is new construction that is built 18 feet from the property line.
- 221 Atlantic Avenue, Units A & B, still has the property stakes in the ground. When measuring from the stakes to the structure, it is 20 feet however the second story deck protrudes 2 feet into the setback.
- 1002 Fort Fisher, Units A & B also had balconies that protruded 2 feet into the setback.
- Those are just a few examples that he has found so far and he believes that that shows that a precedent has been set in Kure Beach and, as such, his cantilevered sundeck should be allowed.

Building Inspector Batson was then recalled.

- Sec. 19-329, Modification of Required Yards, states "Architectural features such as fire escapes, cornices, eaves, steps, gutters, buttresses, open or enclosed fire escapes, outside stairways, balconies, and similar features, but not carports or porches, may project more than eighteen (18) inches into any required yard."
- The properties at 625 and 629 Fort Fisher Boulevard South, have stairways that project only 18".

Testimony was closed by Vice Chair Humphries at 7:52 p.m.

Comments from the Board included:

- Member Swann questioned why setbacks are required and was advised that they exist for passage of emergency vehicles, public utilities and also were intended for general continuity in a community. Some home further south on Fort Fisher do not meet the setbacks but they had been grandfathered in. Should those structures need to be rebuilt, they would be required to meet the setbacks.
- Member Brodsky states that the ordinances do not supply definitions for sundecks or decks and would encourage the Council to have those definitions, including cantilever, to be created.
- The application for the building permit stated that the proposed sundeck would encroach the setback by 2' 6", or 30".
- Member Boulter questioned the difference between a balcony and a porch. Vice Chair Humphries believed that a balcony would be elevated whereas a porch would be ground level.
- Vice Chair Humphries reminded the Board that the issue is with Sec. 19-168 and that encroachment is only permitted to 18" and not 30".
- As to the issue of airspace, if the setbacks do not include the "air", someone could potentially build a balcony more than just into the setback but even into another person's property.
- Violations do exist in Kure Beach and have been brought to the attention of the Building Inspector and are being addressed.

#### FINDINGS OF FACT

As to Question No. 1: Does the addition of the sundeck meet ordinance requirements as per Chapter 19, Section 168:

Vote:            Betty – nay  
                     Peter – nay  
                     Harry – nay  
                     John – nay  
                     Anne - nay

A unanimous vote of "nay" is received.

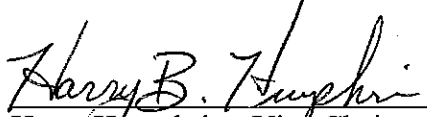
#### DECISION/VOTE OF THE BOARD:

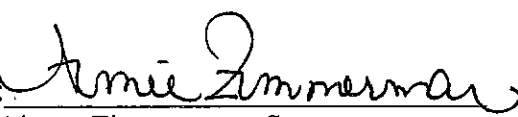
**IT IS THE DECISION OF THE BOARD, UNANIMOUSLY, TO UPHOLD THE DECISION OF THE BUILDING INSPECTOR DENYING THE PERMIT FOR THE PROPOSED SUNDECK ON THE RESIDENCE LOCATED AT 773 SLOOP POINTE LANE.**

Mr. Martin was advised of his right to appeal the decision of the Board and that an appeal could be taken to the Superior Court of New Hanover County within thirty (30) days of receipt of the board's order.

ADJOURNMENT:

**ACTION: Member Swann MADE THE MOTION to adjourn the hearing at 8:19 pm. Member Brodsky seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS.**

  
Harry Humphries, Vice Chair

ATTEST:   
Aimee Zimmerman, Secretary