



# *Town of Kure Beach*

## *BOARD OF ADJUSTMENT*

Annual Organizational Meeting  
Tuesday, April 26, 2016, 7:00pm  
A Quorum was present

### **MEMBERS IN ATTENDANCE:**

Harry Humphries  
Anne Brodsky  
Bryant Bass

### **MEMBERS ABSENT:**

Peter Boulter, Chairman  
Tony Garibay

### **STAFF ATTENDANCE:**

Josie Fitzgerald, BOA Secretary



### **I. CALL TO ORDER:**

Member Humphries called the meeting to Order at 7:00 p.m.

### **II. APPROVAL OF AGENDA:**

**MOTION:** Member Bryant moved to approve Agenda  
**SECOND:** Member Brodsky  
**VOTE:** Unanimous

### **III. APPROVAL OF MINUTES: (2/23/16)**

**MOTION:** Member Brodsky moved to approve the Minutes  
**SECOND:** Member Bryant  
**VOTE:** Unanimous

### **IV. MEMBER ITEMS:**

None

### **V. OLD BUSINESS:**

None

## **VI. NEW BUSINESS:**

Attorney James Eldridge presented the training

### **A. Example of a Zoning Ordinance's Quasi-Judicial provisions**

- Decision making board must conduct a fair and impartial hearing for the purpose of gather competent and sufficient evidence
- The applicant may request to participate in the hearing
- The Board is authorized to issue subpoenas compelling testimony and production of evidence
- Witnesses offering testimony shall be under oath
- The parties to a hearing may cross-examine witnesses and members of the Board may examine anyone presenting evidence
- The applicant has the burden of presenting sufficient evidence for the Board to find facts and conclude whether the standards and requirements applicable to the subject matter have been met.
- If the evidence presented is insufficient, then the application shall be denied
- The Board must weigh the evidence, determine which facts have been proven, and render its decision based upon those facts.
- Each critical finding of fact must be proved by substantial, competent and material evidence.
- Opinion evidence on scientific, technical or other specialized issues (e.g. traffic safety issues, property values and depreciation) unless offered by a properly qualified expert witness, is generally not allowed and shall not be considered by the Board as the basis for a critical finding of fact.
- Members of the Board shall not discuss a case or gather evidence outside of its hearing
- The Board shall not impose an arbitrary time limit on the hearing, but may limit and prohibit unduly repetitious testimony and allow only a single witness representing a group
- The Board's deliberations shall be conducted in open session
- Each case must be decided on its own merits, prior decisions are not binding upon the Board
- The Board shall make findings of fact and apply those facts to the applicable standards of the Ordinance; The Board's decision shall be in writing, signed by the presiding officer and filed in the Town Clerk's office per Sec. 9.5.4.A.-C
- Once a decision is rendered, the matter cannot be reheard unless the Ordinance or conditions on the subject property have substantially changes.
- The minutes of the hearing shall be detailed, witnesses identified and testimony provided. Audio tapes shall be made and retained by the Town Clerk

- A member of the Board shall not participate or vote on any matter in a manner violating the affected person's constitutional rights to an impartial decision. (e.g. conflicts, member having a fixed opinion prior to the matter that is not susceptible to change, undisclosed *ex parte* communication, close relationship with the applicant, etc.)

## B. Section 9.5 – Appeals and Variances

### APPEALS:

- The Board shall hear and decide appeals from a decision or determination made by the official enforcing the Ordinance (i.e. Building Inspector)
- The official shall give written notice to the owner of the property and to the party who sought the decision if different from the owner (e.g. contractor)
- The decision may be appealed by filing a notice with the Town Clerk and state the grounds on which the appeal is based, include names and addresses of property owners whose properties abut the subject property and those who would be abutting if there were no intervening street.
- The applicant shall have thirty (30) days from receipt of the official's written notice to file the appeal. All other persons with standing to appeal (e.g. abutting property owners) shall have thirty (30) days from receipt of actual or constructive notice to appeal.
- Within seven (7) calendar days after the date which the appeal was filed, the official shall transmit to the Board of Adjustment all documents and exhibits constituting the record upon which the action was taken and shall provide a copy to the applicant and the owner.
- The BOA may modify, reverse or affirm wholly or partly the decision being appealed

### VARIANCES:

- When unnecessary hardship would result from the strict letter of the Ordinance, the BOA shall vary the provision
- Filing an application for a variance shall include together with the required fee a complete application with relevant information regarding the subject property, abutting parcels and names and addresses of those owners and written authorization to the applicant if not the owner.
- For the BOA to grant a variance, the applicant must show by competent, material and substantial evidence:
  - (a) Unnecessary hardship would result and absent a variance, no reasonable use could be made of the property
  - (b) The hardship is the result of conditions unique to the property such as location, size or topography. Personal circumstances or conditions common to the general location may not be the basis for granting a variance
  - (c) The hardship is not the result of actions taken by the applicant or property owner, however, purchasing property with knowledge that

circumstances exist which may justify a variance shall not be regarded as a self-created hardship

(d) The variance is consistent with the policy, purpose and intent of the Ordinance and public safety is secured and substantial justice is served

- In granting a variance, the BOA may impose appropriate conditions and are reasonably related to the variance
- No change is permitted uses under the Ordinance may be authorized by a variance
- The concurring vote of four-fifths (4/5ths) of the members of the BOA shall be necessary to grant a variance, a majority of the members shall be required to decide appeals of any other matter.
- The Town Clerk shall deliver, by personal delivery, electronic mail or first-class mail, a copy of the decision to the applicant, the property owner and any other person submitting a written request prior to the effective date of the written decision.

C. Exercise – Variance request

The members participated in a sample variance request from application to final decision.

There was discussion regarding the procedure to follow during the hearing to enable the BOA to analyze the material facts, testimony, etc. when attempting to come to a conclusion. Attorney Eldridge suggested that a worksheet would be helpful during the finding of facts and he could provide that for the BOA.

**VII. ADJOURNMENT:**

**MOTION: Member Brodsky moved to adjourn the meeting**

**SECOND: Member Bryant**

**VOTE: Unanimous**

**Meeting was adjourned at 8:05 p.m.**

  
Peter Boulter, Chairman

Attest:   
Kathleen Zielinski, Secretary