



**KURE BEACH PLANNING & ZONING COMMISSION
SPECIAL MEETING
March 20, 2019 at 6 pm**

MINUTES

The Planning and Zoning Commission (P&Z) held a special meeting on Wednesday, March 20, 2019 for the purpose of holding a public meeting to gather comments on a possible overlay district in the B1 District, and to discuss the *Byrd v. Franklin County* case and Chapter 19 amendments for SIC Codes and permitted uses for B-1 District of the . The Commission did not hold its regular meeting in March.

P&Z Members in Attendance

- Chair Craig Galbraith
- Vice Chair Bill Moore
- Member Kenneth Richardson
- Member Retha Deaton
- Member Robert Young

P&Z Commission Members Absent

None

Staff in attendance

- Building Inspector John Batson
- Town Clerk Nancy Avery
- Administrative Assistance Beth Chase

Attorney Eldridge and liaison Commissioner Whitley attended and a quorum of the commission was present.

CALL TO ORDER

Chairman Galbraith called the meeting to order at 6 pm and stated:

The purpose of the meeting is threefold to discuss:

- 1) The creation of a downtown Mixed-Use Overlay District
- 2) The *Byrd v. Franklin County* case, not related to overlay district
- 3) Chapter 19 amendments for SIC Codes and permitted uses for B-1 District

ADOPTION OF AGENDA

MOTION – Member Moore made the motion to adopt the agenda, as presented

SECOND – Member Richardson

VOTE – Unanimous

OATH OF OFFICE

Town Clerk Avery administered the Oath of Office to alternate member, David Garceau, appointed by Town Council on March 18, 2019.

DISCUSSION AND CONSIDERATION OF A DOWNTOWN MIXED-USE OVERLAY DISTRICT

Chairman Galbraith gave a presentation regarding development of an overlay district in the B-1 Zoning District, stating the Town Council charged the Commission with this item. Key points were:

- Explanation that an overlay district allows additional type of activities within an existing zoning district
- Results of previous studies of the B-1 District which are available on the Town's website
- Expanding the overlay district beyond the B-1 District to other businesses located in other zoning districts
- An overlay may be used to protect a certain look in a community such as a fishing village look and are very standard use in zoning
- Can't be used for spot zoning which applies to only one lot in a zoning district
- Can be overly complicated or very simple and specific
- Most common uses are for natural resource protection or developmental guidance to maintain village feel, which is what we will be considering
- An overlay district for mixed use already exists in the town on K Avenue from 3rd Avenue to 7th Avenue for properties fronting K Avenue
- P&Z will develop a timeline and process for developing an overlay district

Said presentation is herein incorporated as part of these minutes.

Audience comments/questions:

1. Anne Brodsky asked as a business owner in the B1, what does this mean for us and who will pay for it?

Chairman Galbraith replied that they will be looking at developing regulations for an overlay district during this process that could be physical, architectural or use oriented. This is not normally retroactive.

Attorney Eldridge said that existing use is grandfathered, so there would be no changes. The current use will be nonconforming. If there were future changes such as an expansion, then the business owner would have to comply.

2. If a business were sold, would the new owner have to comply with the new regulations? If you want to maintain the existing feel, are you not talking about allowing something like a Hilton?

Chairman Galbraith stated:

- An owner of a current business would only have to adhere to overlay regulations if they made changes

- An overlay usually applies to exterior of buildings, not the interior
- The Council is motivated to try to maintain the village feel that many folks moved here for as the Town grows
- The Town Council made it clear that they do not want this to put a burden on existing business owners and that it needs to be transparent to the community.
- An example in the existing overlay district, is that a café may be allowed but the overlay regulations may say there can be no neon light shining into a neighboring property

Attorney Eldridge explained:

- A business owner wouldn't have to do anything unless the structure was altered, the use or nature of the use was changed or the use was abandoned
- On the Town's website, you can view the section on nonconforming use in Chapter 19 on Zoning in the Code of Ordinances to see how the Town handles nonconforming use.
- For example, in the zoning ordinance each district has its own permitted uses. A simple use in the B1 could be for a hotel. If that was a by-right use meaning there were no other hoops to be jumped through, anyone can do whatever they want to include building a 20- story hotel. With an overlay district, the Town can regulate how high the building can be, how much parking there needs to be, what the overall look must be. This type of process also relies heavily on public input

Expansion of overlay district outside the B1 District

Chairman Galbraith asked P&Z members about whether the overlay to the B-1 District should be limited to only that district or expanded into adjacent districts.

Member Deaton commented she toured the areas of the Town where there were businesses and noted that there are many businesses outside the B1 District that also need to be included in the overlay district.

Member Richardson said there are several businesses not in the B1 District that he thinks should also be included in the study.

Member Moore said he was concerned about areas in between that are not businesses in zoning districts outside the B1 district and how would this impact them.

Chairman Galbraith asked if any business owners in the audience were located outside the B1 District. There was none. He said he was not sure about including anything outside B1 since Council specified the B1. He asked P&Z members if they wanted to vote on whether to include areas outside the B1.

CONSENSUS - Commission members did not want to make the decision at this meeting

Developing process and timeline

Chairman Galbraith suggested taking no longer than six months to develop the overlay district, stating that often when these changes are talked about, a Council will place a moratorium on new development during this process. He recommends a six-month moratorium.

Town Commissioner Whitley stated that Council is waiting to see if the P&Z recommends a moratorium. He said that most likely nothing would happen during the summer anyway since business owners normally make changes during the off-season.

CONSENSUS – Recommend to Town Council that there be a concurrent moratorium in B1 during this process.

Developing the process and timeline

Chairman Galbraith asked about developing the process and timeline during regular meetings or at special meetings.

Member Young stated he would like to discuss it first and then present it to the public so we all understand where we are.

Attorney Eldridge recommended doing this as part of regular meetings.

Chairman Galbraith said they would have this agenda topic on each regular meeting during this process.

Town Commissioner Whitley asked P&Z to reschedule its April meeting as he is out of town that day.

P&Z member asked if they could hold a workshop at 6 pm before the next meeting.

MOTION – Chairman Galbraith motioned to move April 3 meeting to April 9 at 7 pm

SECOND – Member Richardson

VOTE -Unanimous

Member Richardson said they should set the footprint at the next meeting.

Chair Galbraith said they would build a workshop into the April meeting to spend time looking at examples from other towns to begin to determine a footprint for the type of overlay they want to maintain a historic village feel.

Chairman Galbraith asked the audience if there were any additional comments or questions and there were none.

DISCUSSION OF *BYRD V FRANKLIN COUNTY CASE*

Attorney Eldridge asked the clerk to bring up on the screen section 19-79 of the Code of Ordinances, the last sentence of the first paragraph of that section.

He stated:

- The Commission has a copy of the Byrd V Franklin County case and it was discussed in 2016 when container housing was addressed
- A common provision in any zoning ordinance usually provides a use that is not specifically listed as permitted by law or prohibited by law
- A recent decision by the Court of Appeals disallowed the use, because even though it was on the table of prohibited uses, it wasn't expressly prohibited

- This decision was recently voided by the State Supreme Court in favor of non-inhibited property rights:

“A use not specifically addressed by the zoning ordinance shall be expressly prohibited so as not to alter or endanger the purpose of the zoning pertaining to each district and to ensure that the original intent”

- Section 19-79 of the Code reads, “All uses on a particular site or within a particular building must be permitted. If a use is not on the permitted use table, it is then prohibited”.
- The bottom line is if we are prohibiting a use, the ordinance must expressly state it is prohibited
- The Town code allows for catch all prohibitions (Section 19-79.5) and this is no longer allowed
- The problem is that you cannot possibly conceive of every single use that the Town does not want to be able to identify it in the ordinance. This merges into the need for a moratorium during the overlay district process to address this.

Chair Galbraith asked if the Town is now required to list every single prohibited use.

Attorney Eldridge replied:

- The Supreme Court does not favor an ordinance that presumes the prohibition of someone’s use of their land
- He thinks the Town has to start listing every use it doesn’t want
- This Town’s ordinance is the only one that he has seen that has made an attempt to regulate this
- There is another tool that is listed in section 19-79 of the Code, the second sentence in the first paragraph “ if a use is not on the permitted use table, it is then prohibited”
- A list will allow the Town to have an influence on what will be allowed or not

Chairman Galbraith said that an April agenda item for P&Z is to recommend to Town Council to be more specific about what uses it does not want to see here.

CHAPTER 19 AMENDMENTS FOR SIC CODES AND PERMITTED USES FOR B-1 DISTRICT

Mr. Dean Emblar of Sun Fun Rentals asked how the moratorium would affect his application for special use to rent golf carts by the Sunoco station downtown. He hopes to get open before the tourist season starts.

Chair Galbraith stated the moratorium has not passed yet. Building Inspector Batson stated he proposed to P&Z last month having him apply using the special use process under ‘parking lot’.

There was discussion with the following points:

- This was brought before P&Z at last month’s meeting
- It was suggested at last month’s meeting that a text amendment may be needed to specifically allow golf cart rentals in the SIC code 7999
- A text amendment would resolve uncertainty in the Code as to whether golf cart rentals were allowed as a special use permit
- Using special use for a parking lot for golf cart rentals is a broad interpretation

- It is the Building Inspector's job, as zoning officer, to determine what he thinks qualifies as special use when accepting an application, then P&Z and Town Council's job to agree or not with him
- If it is approved under SIC code 7999, then could everything else under that code be considered special use
- If the business owner applies before the moratorium becomes effective, he would not be impacted
- The business owner should apply right away and submit for the P&Z April agenda

MOTION – Chairman Galbraith motioned to direct the P&Z to have prepared for the April Town Council meeting appropriate documents and definition to allow golf cart rentals as a special use.

SECOND – Member Richardson

VOTE – Unanimous

Chairman Galbraith told Mr. Embler he should apply for a special use permit right away. P&Z will consider it on its April agenda and Council can act on it at its April meeting.

ADJOURNMENT

MOTION – Member Deaton motioned to adjourn at 7:37 pm

SECOND – Member Young

VOTE – Unanimous



Craig Galbraith, Chairman

ATTEST:

Nancy Avery, Town Clerk

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