

KURE BEACH PLANNING & ZONING COMMISSION  
REGULAR MEETING ♦ NOVEMBER 12, 2007

A regular meeting of the Kure Beach Planning and Zoning Commission was held on Monday, November 12, 2007 at 7:30 p.m. A quorum was present.

MEMBERS IN ATTENDANCE

Chair – Alan Votta  
Vice Chair – Ken Buchert  
Members – James Schutta, Janet Foster

MEMBERS ABSENT

Tim Bullard

STAFF IN ATTENDANCE

Building Inspector John Batson  
Clerk Nancy Avery

Liaison Commissioner Dean Lambeth was in attendance. Attorney Holt Moore was in attendance.

CALL TO ORDER:

Chairman Votta called the meeting to order at 7:30 p.m.

APPROVAL OF MINUTES

ACTION - Member Buchert MADE THE MOTION to approve the October 2, 2007 minutes with one correction as follows:

Page 1, under item "November meeting" change November 2nd to November 6<sup>th</sup>

Member Schutta seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS.

Member Foster arrived at 7:42pm, after the vote on the minutes, however a quorum existed for the vote on the minutes.

PERSONS TO ADDRESS THE BOARD

Charlie Allo, resident, stated:

- he is making the assumption that the recent changes in parking regulations pertain to residential use



- everything in the town is listed under the SIC codes and if it is not listed under SIC, it is not allowed
- residential units that are lived in, as the use, don't fall into SIC
- cottages or tourist lodging –anything rented out for seasonal purposes comes under SIC 7011 and is already covered for parking in 19-339 item 3 of the ordinance. It calls for one parking space per each room in the house plus two for management
- parking is controllable under the current ordinance – if it is not being controlled, it doesn't mean it hasn't been grandfathered – if there are vacation rentals that can't meet parking requirements outlined in 339, they are out of luck
- NCGS 42A gives three or four exceptions for part time rentals, but not vacation rentals – that's considered a business
- P&Z has been adamant in the past against special use unless you can find a way for it not to become a political tool. Look at NCGS 160A-381 regarding special use. Look at court cases and complications that have arisen due to misuse of special use.
- he suggests very strongly that to keep the town out of problems in the future and to prevent misuse by political hands, P&Z should look at very carefully.

#### OLD BUSINESS

Dexter Hayes, Hayes Planning, presented proposed amendments to the ordinance regarding special use as follows:

#### Chapter 19, section 82 (new –amend ordinance to add)

##### Special Use Permit

- procedures are set up so that Town Council makes final decision on special use
- public hearing is only required for Town Council – can set up anyway P&Z wants
- advise P&Z to hold public hearing anyway – good tool to get idea of public reaction.
- application can only be submitted by property owner or agent of property owner – no speculation by non-owner
- 4 findings have to be made by Council
  - *that the use will not materially endanger the public health or safety if located where proposed and approved;*
  - *that the use meets all required conditions and specifications;*
  - *that the use will not substantially injure the value of adjoining property, or that the use is a public necessity; and*
  - *that the location and character of the use if developed according to the plan as submitted and approved will be in harmony with the area in which it is located and in general conformity with the comprehensive plan and other plans for the area*
- have to take only testimony – not hearsay – have to be careful to sort fact from hearsay
- should make the applicant go through findings and answer each question – such as how is it in harmony with the area, is it in compliance with LUP, etc.



- must find affirmative with all 4 findings to approve – if one is negative, can't approve project
- may add additional conditions – make part of the plan, not in addition to - such as additional driveway, limit hours of operation, etc.
- if a permit is denied, should enter reasons for denial – enter into the record.
- special use permit transfers with the land – bound by permit - can't arbitrarily change.
- new use (if allowable use) on property is okay, makes old use (special use) go away – nullifies
- should be a time line once approved – 2 years is normally acceptable time – after two years, goes away if owner hasn't developed - has to reapply – starts from date of denial.
- vesting – can allow if shows evidence some activity has taken place
- Council can allow P&Z to make some minor changes once special use permit approved (item 5a)
- suggests adopting waiting period before reapplying when denied – 6 months
- recommends final signed plan if approved

#### Questions

Member Schutta - so areas we don't define as special use, would still be listed under each district?

Mr. Hayes - yes

Chair Votta – can all uses be special uses? Since the B1 is so small, wouldn't it give us more control?

Mr. Hayes – yes

Mr. Hayes asked for a recommendation on the length of the waiting period to reapply  
Consensus – use 6 months – could come back same plan after 6 months – wouldn't have to have substantial change

#### Chapter 19 – 283 (new –amend ordinance to add)

##### Site Plan requirements

Mr. Hayes stated he couldn't find any site plan requirements in chapter 19, Zoning, only in Chapter 15, Subdivision. Mr. Hayes reviewed his proposed amendment to the ordinance adding site plan requirements to Chapter 19, Zoning.

Chair Votta recommended taking to Council first for approval before spending further time specifying which uses would be special use.

Attorney Moore stated that the nice thing about special use is you know it can't go through without being able to take a close look at it.



## Parking

Mr. Hayes stated:

- P&Z could eliminate all parking requirements in the B1 district to eliminate some of the issues in the business district
- downtown Wilmington doesn't have any parking restrictions downtown
- your ordinance doesn't allow combination of parking spaces or shared use
- there are ways to allow sharing of businesses that have different business hours, such as using a church parking area for valet parking for restaurants
- he will bring parking suggestions to the next meeting

ACTION – Chair Votta MADE THE MOTION to send the special use permit proposal and the B-1 permitted uses as presented by Hayes Planning to Council for review, discussion and adoption with the ordinance to be amended at a later date. Member Buchert seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS. Said proposal is herein incorporated as part of these minutes as attachment A.

ACTION Member Schutta MADE THE MOTION to take the recommendation from Hayes Planning on 19-243 on permitted uses to cross out items 2, 6, 7, 13 and 22 to Council along with the purpose statement for review and approval. Member Buchert seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS. Said referenced items and recommendation is herein incorporated as part of these minutes as attachment B.

## NEW BUSINESS

1) Proposed amendment – community facilities

Council and Planning and Zoning held a work session on October 30, 2007 to discuss a proposed amendment to clarify the definition of a community facility, such as a beach club. A public hearing scheduled on the subject was continued until Tuesday, November 20<sup>th</sup>, 2007 at 7pm. Council would like a recommendation from P&Z at Council's November 20<sup>th</sup>, 2007 meeting.

### Proposed amendment

That Chapter 19, Zoning, Article I, Section 19-1, Definitions, of the Code of Ordinances for the Town of Kure Beach is hereby amended by adding the following bolded language:

#### Section 19-1 Definitions

Common areas and facilities shall mean those areas of a housing project and of a property upon which it is located **within the jurisdiction of this ordinance** that are for the use and enjoyment of the owner of family units located in the project. The areas may include the land, roofs, main walls, elevators, staircases, lobbies, halls, parking space, and community facilities. **Community facilities are non-commercial recreational facilities such as a club house, swimming pool, tennis court or beach access for the exclusive use and enjoyment of the owners of family units located in the project.**

### Questions/discussion:

Member Buchert asked Attorney Moore if he is satisfied with proposed amendment.



Attorney Moore replied that he thinks it is fine the way it is, and it ties into zoning district B-4.

Member Schutta asked Attorney Moore is the language “within the jurisdiction of this ordinance” protect us?

Attorney Moore replied yes.

Member Buchert asked Attorney Moore is this would hold up in court if challenged?

Attorney Moore replied that he doesn't see any problem. I don't see anything far enough down the pipeline for this to apply to them. Town has a lot of discretion. I think it would be upheld.

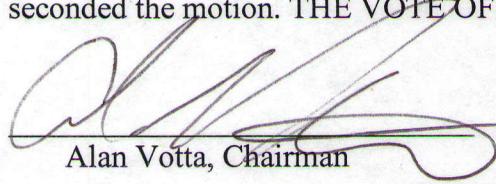
ACTION – Chair Votta MADE THE MOTION to recommend approval of the proposed amendment to 19-1. Member Foster seconded the motion THE VOTE OF APPROVAL WAS UNANIMOUS

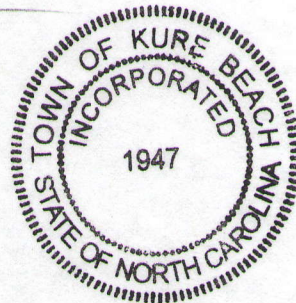
MEMBER ITEMS

Member Buchert – a new chairman and vice chairman need to be elected at the December meeting and needs to be added to the agenda.

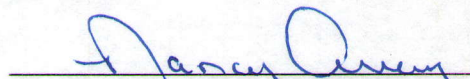
ADJOURNMENT

Member Schutta MADE THE MOTION to adjourn at 9:05pm. Member Buchert seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS

  
Alan Votta, Chairman



ATTEST:

  
Nancy Avery, Clerk