

**KURE BEACH PLANNING & ZONING COMMISSION  
TUESDAY APRIL 1, 2008**

**MINUTES**

MEMBERS IN ATTENDANCE

Chair – James Schutta  
Vice Chair – Janet Foster  
Members – Alan Votta, Tim Bullard, Craig Galbraith

MEMBER ABSENT

None

STAFF IN ATTENDANCE

Town Administrator Michelle James  
Building Inspector John Batson  
Clerk Nancy Avery

OTHERS IN ATTENDANCE

Attorney Holt Moore  
Liaison Commissioner Barry Nelder

A quorum of the commission was present.

CALL TO ORDER:

Chair Schutta called the meeting to order at 7:33 pm.

APPROVAL OF MINUTES:

**ACTION** - Member Foster **MADE THE MOTION** to approve the March 4, 2008 minutes with one correction:

Replace member Tim Bullard's name with former member Ken Buchert's name under 'members in attendance' paragraph. Member Votta seconded the motion. **THE VOTE OF APPROVAL WAS UNANIMOUS**

PERSONS TO ADDRESS THE BOARD

1. James Smith, resident, stated:

- he is glad the Town Council turned back the changes to the height limit - we fought long and hard to keep the 35 foot height limit and once you start putting pin holes in it, a lawyer will drive a truck through it
- if you allow more than 35 feet, have you considered that handicapped regulations would also increase the height over 35 feet and you can't deny handicap access
- if someone's interpretation gets loosened, it opens it up for flat roofs and 4 foot extensions and up to 12 foot for handicap – that's getting up there
- when Bill Hanna (building inspector) was here, no one could get any agreement that allowed a deck to have railings above the eaves – the changes started with Mr. Ivey (building inspector)

Other comments from the audience

- allowing roof decks higher than 35 feet is not good
- are you only considering this for the B1 district?
- this violates the law that a lot of people fought to get passed – what part of 35 feet height don't you understand?

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- what's the problem about 35 feet – what don't you understand about 35 feet?

**ORGANIZATIONAL ITEMS**

None

**OLD BUSINESS**

**1. Driveways and impervious surfaces**

Eric Vann, chairman, storm water committee chairman stated:

- impervious surface is only mentioned in two places in the storm water ordinance
  - a) shellfish waters – this doesn't apply to Kure Beach
  - b) development in critical area of water sheds - this requires that the first inch and a half of rainfall hitting a property has to be held on that property – this alone requires a high degree of pervious surface or best management practice to take care of the water – this applies to Kure Beach
- two properties have been developed under the current ordinance and have complied with the storm water ordinance requirements
- there is legislation afoot to require all paved surfaces to incorporate 30% of pavement area as pervious surface. If this passes, it will go into effect this October
- non source pollution is the # 1 water quality problem in the United States
- pervious area is important – Kure Beach has a pretty liberal building policy that allows 65% impervious surface. The Town also allows a 24 foot wide strip of impervious payment across the Town's right of way
- the storm water committee will have a booth at the festival and will have rain barrels that can be purchased along with educational information
- all properties already permitted under the state water permit can continue to build without incorporating the new guidelines in the storm water ordinance

Questions and answers:

Q - driveways and roofs are impervious areas – do you have recommendations that homeowners could implement without ordinance requirement to shift the way water drains from the roof?

A. – yes, you can have the roof drain onto land rather than the driveway or have roof water drain into a rain barrel

Q - how can we make requirements in those areas already permitted by the state when the state doesn't require anything from the property owner?

A – we can't make recommendations to property owners such as what the Town has done with including small areas of pervious surface in the Community Center's parking lot. The Town may eventually be able to take over policing from the state, but until then we have to comply. It may require legal action to go back to a permitted subdivision to mandate a storm water system.

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Commission comments:

- original intent was to have pervious surfaces in driveways
- think we can deal with some of these issues on a voluntary basis rather than mandating
- have to wait for more information and see what comes out of legislature before proceeding

ACTION – Member Votta MADE THE MOTION to table this topic to a future meeting when more information is available. Member Bullard seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS

2. Zoning amendment recommendations to Town Council

On March 18, 2008, the Town Council took the following actions on amendments proposed by Planning and Zoning:

- approved amendments # 2 (special use), # 5 (parking) and # 7 (minimum use of lot, lot of record, nonconforming) in their entirety with no changes
- approved portions of amendments # 1 (deleted permitted uses 2, 6, 7, 22 in the B1; made uses 8 and 14 special use only) and # 3 (approved roof pitch of 4/12) and returned portions of both to P&Z for revision
- did not approve amendments # 4 (hotel, tourist lodgings) and # 6 (signs) and returned to P&Z for revision

Returned amendments to be addressed:

a) Amendment # 1, Article III, Division 10, Section 243, Permitted uses in B1

Council did not approve deleting permitted use # 13 ‘manufacturing’ and asked Planning and Zoning to reconsider definition of the term ‘manufacturing’.

Highlights of audience comments:

- if someone was to manufacture something for retail, what would it hurt?
- ordinance limits manufacturing to 5 employees, so that limits size
- what do we want to allow as manufacturing?
- we want to protect arts and crafts type things, such as making glass lamps, surf boards, and things manufactured to be sold on site. You could limit by size of the product, possibly
- don’t want a US Steel type of business

Highlights of Commission comments:

- ordinance allows home businesses, like sewing, etc under the permitted use ‘retail’

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- think this is a non-issue when looking at the industry definition codes – these types of things mentioned are not defined as ‘manufacturing’ by codes – need to leave it the way it was proposed
- also with special use we just passed, any business coming in can apply for a special use permit
- these things are allowed in the retail category, so deleting # 13 ‘manufacturing’ doesn’t mean these types of things aren’t allowed – it means larger industries such as high volume
- we could better define ‘manufacturing’, but don’t think it is a problem - incorporated in permitted use # 18 ‘retail’

ACTION - Member Bullard MADE THE MOTION to send back to Council the deletion of permitted use # 13 as previously recommended with the understanding that types of businesses discussed such as jewelry making, etc is covered under permitted use # 18 ‘retail’ according to industry code definitions. Member Foster seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS

b) Amendment # 3, Article IV, Sections 333(b), height limit exceptions

Council did not approve proposed changes to subsection (b) and returned to Planning and Zoning to reconsider and make a recommendation on the following:

- allowing parapet walls to extend 4 feet beyond the 35 foot height limit - too high an exception– no higher than 35 feet
- size of roof decks and the fact that that they are allowed to exceed the 35 foot height limit
- double check fire code for extension of parapet walls and allow only required extension
- define parapet wall
- discuss for B1 district only

Highlights of Commission comments:

- our reasoning was to put a definition on these items that currently did not have any guidelines before, so the Building Inspector wouldn’t be working in a gray area all the time
- the Town Attorney, at the Town Council meeting, read the state law on the 35 foot height limit that allows exceptions to height limits for the items referenced in (b)
- we left some exceptions because of building code requirements for such things as cooling tower, etc.
- we are trying to clarify
- if there is the 35 foot limit requirement and there is an ADA requirement, can we legally be forced to allow a deck to exceed our requirement?

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- we could take out decks and not allow
- what about mechanical equipment – even with hydraulics, an elevator shaft will still have to exceed 35 feet
- from an aesthetics point, we would also want to screen certain things and we need to exceed the height limit to do that
- we are talking about the B1 district and the Town has spent a lot of time, money and effort to encourage business in the B1 district – think we are trying to put another handcuff on business owners – don't see any problem with allowing parapet walls or elevator shafts, etc to extend above the 35 foot height limit
- what about the building requirements that certain things such as parapet walls have to exceed the height of the building?

Highlights of audience comments:

- cooling tower went out in the 1950's
- the way it was presented to Council was with no limit on height exception for roof decks
- in the past, you had to get an exception to put up a widow's walk
- a standard hand rail is 42 inches for commercial
- never have seen an individual on these decks – this is basically a 2-3 month community in the summer – don't understand benefit of going above 35 feet
- state law is state law – majority of people got what they wanted. State law says you can exceed height limit. What is the intent to knock a chimney down to 35 feet?
- don't understand 35 foot deck or elevator shaft issue. If 35 feet is the limit, we can't have an elevator shaft. Once again we are putting a screw in the motels. A three story motel has to have an elevator –don't understand why all these residents are so afraid about an elevator shaft extension in the B1 when they don't have a dog in the fight
- new elevators don't require going above finished floor
- the amendment language isn't the same as the state law - state law doesn't say 'parapet' wall
- why don't we use the language from the state law instead?

Chairman Schutta stated he understands the consensus of the audience is that they don't want decks above 35 feet.

Chairman Schutta read the state law establishing the 35 foot height limit as follows:

“SECTION 1. No building erected within the corporate limits of the Town of Kure Beach may have a height in excess of 35 feet above ground level unless the building was erected before the effective date of this act. Variances of the height limitation shall not be granted.

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SECTION 2. The height limitation created by Section 1 of this act does not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.”

Attorney Moore commented that the state law sets these exceptions out and allows them to go above 35 feet and also references appurtenances not intended for human occupancy –if I had to interpret this, I would say the state law already precludes human occupied decks above 35 feet.

Chair Schutta called for a recess at 8:44pm

Chair Schutta resumed the meeting at 8: 51pm

Discussion highlights of Commission:

- we could consider using language from section 2 from the state law (35 foot height) – the intention was to put height limitations in B1 only – not other districts
- we also wanted to address parapet walls for screening – the old ordinance has no restrictions
- maybe we need to stop decks completely
- a deck at 35 feet means that the railing can't exceed 35 feet, so if there is a four foot railing around the deck, the deck could only be 31 feet
- occupancy means human use (referring to state law terminology)
- if we interpret railing as part of the height of a deck, then do we even need to address or change anything?
- how can we get it so anything over 35 foot height limit is reviewed by Town Council? Can't we make it to be approved by special use only?
- we could add a statement that anything over 35 foot height has to come to Planning and Zoning and Council for approval
- section 2 is pretty clear except for elevator shaft – if attorney thinks this qualifies under occupancy as per state law, then it is covered
- don't use special use – can't use for everything – might open the door for more issues
- why don't we add some definitions to the definitions section?
- Section 2 pertains to the whole town, not just the B1

Attorney Moore stated he doesn't think the proposed amendment to subsection b of Chapter 19, section 333 is in conflict with the state law on 35 foot height limit. The state law clearly says no limit on those items, and also implies nothing over 35 feet for human occupancy.

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Commissioner Nelder asked Attorney Moore - if I'm understanding what you are saying, then we have the ability to do whatever we want with section 2 on this, we can make it entirely special use, leaving everything at 35foot - am I wrong? That would be perfectly legal, correct? How can we get this section 2 so that it is subject to review by the Town?

Attorney Moore replied that normally with a special use permit you are talking about the use of the property as opposed to the structure or a particular type of structure, so this would be an unusual use of the special use permit concept. It depends on how you want to review it. You could have an aesthetic review committee, if that was the concern, but normally for special use what you are talking about is whether the use is in harmony with surrounding uses such as noise, smoke, etc, so you would have to set up some type of criteria. You could look at the special use criteria just set up and see how it would apply. You have to be careful about having some type of criteria, because when you have unbridled discretion based solely on opinions of who happens to be sitting in the chair, it doesn't go well when attacked by a court. If you want to micro-manage it, you'd have to set up a criteria for every single one of those items. To say that anything over 35 feet, without giving any criteria on how it will be approved, could be approved by Planning and Zoning, that could be a real hard thing to defend in court if someone gets denied. If you couldn't show any criteria other than "didn't like", then it is possible the Town could get into trouble legally. It can be done, but you have to set up some kind of parameters.

**ACTION** - Member Votta **MADE THE MOTION** to recommend to Council to amend Chapter 19, section 333 (height limit exceptions), paragraph b, by deleting the words 'cooling towers, scenery lofts, monuments, domes, spires', from the existing language.

Proposed amendment to read:

(b) "Chimneys, elevators, bulkheads, parapet walls, and masonry mechanical appurtenances may be erected, to any height in accordance with existing or hereafter adopted ordinance"

Member Foster seconded the motion. **THE VOTE OF APPROVAL WAS UNANIMOUS**

**ACTION** - Member Galbraith **MADE THE MOTION** to recommend to Council to amend Chapter 19, section 333 (height limit exceptions), paragraph c, to add the following language "to ensure compliance with the zoning ordinance".

Proposed amendment to read:

(c) "Structures that exceed the height limitation established must be approved by the building inspector's office to ensure compliance with the zoning ordinance"

Member Bullard seconded the motion. **THE VOTE OF APPROVAL WAS UNANIMOUS**

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c) Amendment # 4 Article I, Section 19-1 Definitions of hotel/tourist lodgings

Chair Schutta explained that the Town Council did not approve amendment as proposed and returned to Planning and Zoning only to consider also amending the room size from 425 ft to 600 feet. No other changes were requested.

Discussion:

Ronnie Pernell, business owner, suggested changing the unit size maximum currently listed as 425 square feet to 650 square feet.

ACTION – Member Foster MADE THE MOTION to send back to Council the previously recommended amendment to Chapter 19, section 1 (definitions) with one additional change to the unit size in definition of tourist lodgings from 425 square feet to 650 square feet inclusive of bathroom and closet, but not balcony . Member Bullard seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS

Proposed amendment to read:

**Section 19-1 Definitions (Tourist lodgings)**

*Tourist lodgings* (7011) shall mean a building containing rooms designed to be used for the most part as sleeping accommodations for tourist/vacationers or short term transients (i.e., hotel, motel, boardinghouse, rooming house and bed breakfast) as distinguished from a residential dwelling. No more than five percent of the individual units shall be occupied for more than 90 continuous days by the same occupant. The individual unit will be no larger than six hundred fifty (650) square feet in size inclusive of bathroom and closet areas, but not balcony areas. Any unit exceeding six hundred fifty (650) square feet in size will meet the dimensional and parking requirements of residential units section 19-331 and section 19-339. A tourist lodging will have one (1) water meter and one (1) electric meter. Individual metering is prohibited.

**Section 19-1 Definitions (Hotel)**

*Hotel* (7011) shall mean a building intended or designed to be used as tourist lodgings which are rented to short term transients where a general kitchen and dining room are provided within the building or in an accessory building. Typical hotel services must be offered including daily linen and maid service, and receipt and disbursement of keys and mail by the attendant at the desk in the lobby or office, for the occupants of the hotel. No hotel facility shall be converted to or used as a multi-family residential dwelling (See tourist lodgings)

d) Amendment # 6, Article VI, Sections 379 and 382, Signs

Chair Schutta explained that the Town Council did not approve the proposed amendment to Article VI, Sections 379 and 382 on signs and returned it to Planning and Zoning to



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consider suggestions made by Mr. Galbraith at the March 10, 2008 public hearing and to make a special consideration to work with business owners.

Mr. Galbraith stated that his suggestions were to:

- punch up prohibited sign regulations
- establish amortization process to allow signs that will be made non-conforming under ordinance amendment to become conforming, possibly over a 7-10 year time period
- define illegal signs and set up a process for dealing with violations

Audience comments:

Mr. Purnell, hotel owner, stated:

- businesses have to be able to advertise – Kure Beach is no longer a “new destination”
- if you are going to have all the types of business that you say you want, you have to have a tremendous amount of foot traffic and that needs signs to attract people.
- he has no problem with doing away with blinking signs
- the size of the sign needs to be big enough to say this is where this place is and have room for other information such as specials being offered, etc. It has to be large enough to attract and tell the public what kind of business it is.

Tom Humphries, restaurant owner, stated:

- he doesn't think there is any problem with the signs in the B1 district as they are and that this is just something else that is going to hurt the business district.
- the sign that says ‘welcome to Kure Beach’ won't meet the proposed sign limit sizes
- this amendment will create a lot of non conforming signs

**ACTION – Member Bullard MADE THE MOTION to table the proposed amendment regarding signs until the next meeting for further discussion. Member Votta seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS.**

3. verify mixed use is taken care of with special use – model mixed use ordinances  
Building Inspector Batson, Town Administrator James and Member Galbraith to research what other towns are doing for mixed use and bring suggestions

**ACTION – consensus – tabled until next meeting.**

4. stringent land use check off procedure (as per CAMA Land Use Plan)

**ACTION – consensus – tabled until next meeting.**

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NEW BUSINESS

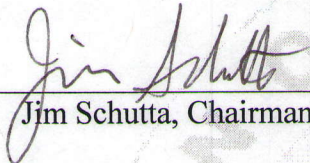
None

MEMBERS ITEMS

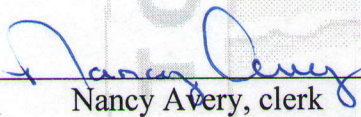
None

ADJOURNMENT

ACTION – Member Bullard MADE THE MOTION to adjourn at 9:51pm. Member Votta seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS.

  
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Jim Schutta, Chairman

ATTEST:

  
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Nancy Avery, clerk

