

**KURE BEACH PLANNING & ZONING COMMISSION  
THURSDAY, MAY 8, 2008**

**MINUTES**

On Thursday, May 8<sup>th</sup>, 2008, the Planning and Zoning Commission held their regular meeting. The meeting was rescheduled from Tuesday, May 6<sup>th</sup>, 2008 due to primary elections being held on May 6<sup>th</sup>. Notice of the rescheduled meeting was posted at Town Hall on April 24, 2008.

MEMBERS IN ATTENDANCE

Chair – James Schutta  
Members: Alan Votta, Craig Galbraith

MEMBERS ABSENT

Vice Chair – Janet Foster  
Member Tim Bullard

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 7:44pm.

**APPROVAL OF MINUTES**

**ACTION** – Member Votta **MADE THE MOTION** to approve the April 1, 2008 minutes with no changes. Member Galbraith seconded the motion. **THE VOTE OF APPROVAL WAS UNANIMOUS**

**OLD BUSINESS**

1. Chair Schutta reviewed the status of proposed zoning amendment recommendations stating the Town Council took the following actions at their April meeting:

- Approved amendment (# 1) to Chapter 19, Article III, Division 10, Section 243, Permitted uses in B1 to delete permitted use # 13 ‘manufacturing’ from permitted uses in the B1
- Took no action on proposed amendment # 8 (as recommended by P&Z on 4/1/08) to Chapter 19, section 333 (height limit exceptions), subsection b on height limit exceptions
- Referred to P&Z a new amendment to Chapter 19, section 333 (height limit exceptions), subsection (b) to read “no habitable structure or part of any habitable structure in Kure Beach should exceed 35 feet”

- Rejected proposed amendment # 9 (as recommended by P&Z on 4/1/08) to Chapter 19, section 333 (height limit exceptions), subsection (c) on height limit exceptions on authority of Building Inspector to add “to ensure compliance with the zoning ordinance”
- Approved amendment (# 4) to Chapter 19, section 1 (definitions) for tourist lodgings and hotels as recommended by P&Z with no changes.

2. Chair Schutta stated that the Town Council proposed a new amendment to Chapter 19, section 333 (height limit exceptions), subsection b on height limit exceptions to read as follows and referred it to Planning and Zoning for review and recommendation:  
 “no habitable structure or part of any habitable structure in Kure Beach should exceed 35 feet”.

Discussion:

Commission and staff comments:

- It sounds like what they (Council) wanted is a very, very simple statement. I think approving this is okay, but it will probably come back with the same issues and some project will be brought to the commission that will create a debate in the future (Galbraith)
- Would AC units be considered part of a habitable structure? (Votta)
- I looked up the definition of a ‘habitable structure’ and it was defined as having a ground supported surface and a roof. (Schutta)
- If I’m going to build in the B1 district with a 3 foot setback at a cost of \$100 per square foot, using land for an HVAC unit is costly. This commission would like to see the B1 district survive as per the Land Use Plan and it won’t if we put too many restrictions. This only makes it harder. Probably the only viable business is mixed use and we’ll probably end up with homes on the second floor and vacant businesses on the bottom. This might change the value of my property. (Schutta)
- Is there a staff recommendation on this? (Galbraith)
- Building Inspector Batson stated he recommends using the same language that is in the state law.
- This amendment doesn’t restrict anything. (Votta)
- We can be more restrictive to say nothing over 4 feet. (Batson)
- That’s what we tried to do the first time and council rejected it. (Votta)
- A habitable structure is a house and I think Council’s intention is saying no part of the house would be more than 35 feet and that would mean no elevator shaft, parapet wall, etc. (Moore)
- The state law says exceptions do not include the area designed for occupancy. A hand rail would be part of the occupied section of a structure. This is a different analysis than habitable. I interpret ‘meant for human occupancy’ in the state law to mean no decks. (Moore)
- We were originally asked by Council to clean up the ordinances, which is why we eliminated some uses, and to clarify the Building Inspector’s job when interpreting the ordinance. I don’t think Council’s proposal clears up interpretation but makes it grayer. (Votta)

- Right now we have defined habitable space as nothing outside the home, or commercial space – what do commission members think of that? (Schutta)
- I don't think the proposed amendment supports the Land Use Plan's intent to support the B1 district and this puts a nail in the coffin. It eliminates any hotel development. (Votta)
- I think Council's intention is nothing over 35 feet. I believe if we make a beautiful, attractive city, business will come. I know we are going to see in the future where we have to determine whether a hand rail is considered habitable space or not. (Galbraith)
- Our job was to put ordinances in place that will grow with the Town. We shouldn't put future businesses through the process of going to the Board of Adjustment to put up a parapet wall or elevator shaft. That's not encouraging business. (Votta)
- I have heard comments for two months now and I am open to all these issues. I would love to know that the people in the community are comfortable with not going over 35 feet unless you go to the Board of Adjustment to plead your case and I would feel safer about making such an important decision when we have the full commission present. (Schutta)
- A public hearing wouldn't provide more information than we already have. The issue is are we going to establish the 35 foot limit for everything or not. (Galbraith)
- The original intent of the exceptions pertains to the downtown business district. It is outdated and doesn't work for what we have here. (Votta)
- The crux of the discussion is - is it 35 feet only or 35 feet with a few exceptions to help the business district? In past experience, I have found that businesses complain at first but end up building as requested anyway. (Galbraith)

Audience comments:

- An elevator shaft doesn't need to extend past the roof as per my conversations with elevator builders. In speaking with motel/hotel owners with 120 rooms, each room has a slide in AC unit. It doesn't need to be on top of the hotel. There are currently no HVAC units on the roof in Kure Beach. (Lambeth)
- The purpose of tonight's meeting is to address what Council sent back. We need to focus on that and the definition of 'habitable structure'. (James)
- I am speaking as an attendee to this meeting. When you are talking about things on the roof and a businesses investment, are you suggesting standards that apply to business and commercial zone be different than what applies to the residential area? Isn't the zoning ordinance written so that height limit exceptions apply to all areas? Does the current ordinance allow height above 35 feet? (Montgomery)

Building Inspector Batson replied that yes the current ordinance allows height above 35 feet.

Chairman Schutta responded that yes, we are trying to tighten up the current ordinance.

Member Votta replied that right now a parapet wall has no height limit.

Audience comments continued:

- The state law allows exceptions above the 35 feet. Our ordinance allows much more than that, it doesn't limit anything over 35 feet (Montgomery)
- Santa Barbara, California has a lot of restrictions and has had no problems attracting businesses. (Lambeth)
- We don't have to put in the 'b' part of the state law. We are not obligated to use both paragraphs. The one thing that killed Planning and Zoning's proposed amendment was that parapet walls had no limit. (Nelder)
- I want to make sure this applies to the B1 district. Are stores habitable or does habitable apply to the B1? (Nelder)
- We could maybe say no structure for residential or commercial purpose shall exceed 35 feet. (Moore)
- The Land Use Plan says the Town should support the B1 district. We have lifted parking restrictions, put in recycling and we are helping them in every way we can. (Lambeth)
- The intent of Council was for Planning and Zoning to have a public hearing. (Nelder)
- Are you suggesting you aren't comfortable acting and sending something to Council until you have the full commission support? (Montgomery)
- In essence you are saying you don't need paragraph b from the state law. (Nelder)
- While we are debating this, if someone comes in and wants a roof top deck, do we have the authority to deny it? (Montgomery)

Building Inspector Batson replied that it is up to his discretion.

ACTION – Member Galbraith MADE THE MOTION to table the discussion on the amendment to Chapter 19 (zoning) section 333 (height limit exceptions), subsection b on height limit exceptions as proposed by the Town Council until the full commission is present and has received a defensible legal definition of what constitutes 'habitable', 'occupied' and a clear understanding of ADA access requirements from the staff and the attorney. Member Votta seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS.

3. Amendment # 6, Article VI, Sections 379 and 382, Signs - tabled from April meeting  
Chair Schutta explained that Council did not approve the proposed amendment at the March meeting and returned it to Planning and Zoning to consider suggestions made by Mr. Galbraith at the March 10, 2008 public hearing and to make a special consideration to work with business owners.

Galbraith's suggestions on March 10, 2008 were:

- 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

Town Administrator James stated that some of the commissioners have been working with Commissioner Vattr on an economic plan and one of the suggestions is making part of the B1 a 'Main Street'. The Main Street program has definitive rules on signs, so any changes made need to be in line with the Main Street program.

ACTION – Member Votta MADE THE MOTION to table further discussion on amendments to sign ordinances until next month with Member Galbraith to create the four components missing from the sign ordinance (prohibitive signs, amortization of signs, penalties, and prefacing) along with a Main Street model. Member Galbraith seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS.

4. Verify mixed use is taken care of with special use – model mixed use ordinances (tabled from April meeting)

Member Galbraith stated:

- There are model ordinances for mixed use.
- We may also want to consider 'form based zoning'. This basically is a show us 'what you propose' method where the Town doesn't necessarily specify requirements. It is mainly used for commercial and mixed use. It is a non-traditional way of doing zoning for mixed use environment.

Liason Commissioner Nelder asked if this is leading toward an architectural review board.

Member Galbraith replied yes, form based zoning requires an architectural review board.

ACTION - consensus - table further discussion on mixed use until the next meeting. Member Galbraith to work with staff on forming new mixed use ordinance.

5. Stringent land use check off procedure (as per CAMA Land Use Plan) - tabled from April meeting.

ACTION - consensus – table.

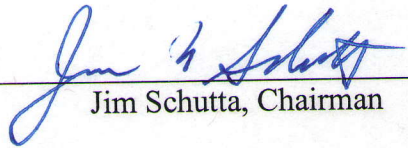
#### NEW BUSINESS

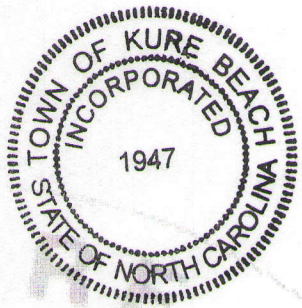
1. Member Galbraith stated that Planning and Zoning needs to add proposed amendments to prevent drive through restaurants and large 'Wings' type stores to the agenda for discussion.

ACTION - consensus –add prohibition of drive through restaurants and limiting size of retail stores to next month's agenda.

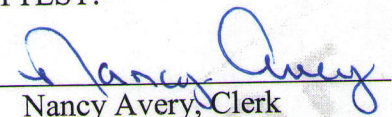
#### ADJOURNMENT

ACTION – Member Galbraith MADE THE MOTION to adjourn at 8:55pm. 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

NOTE: These are action minutes reflecting items considered and actions taken by Council. These minutes are not a transcript of the meeting. Persons wishing to hear the recording of this meeting may request to do so by contacting the Town Clerk.

