



KURE BEACH PLANNING & ZONING COMMISSION REGULAR MEETING

A regular meeting of the Kure Beach Planning & Zoning (P&Z) Commission was held on Wednesday, March 2, 2016. A quorum of the Commission was present.

P&Z MEMBERS IN ATTENDANCE

Chairman John Ellen
Vice Chairman Alan Votta
Member Craig Galbraith
Member Bill Moore
Member Kenneth Richardson

ABSENT

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Councilman Joseph Whitley, Liaison  
P&Z Attorney James E. Eldridge

### **STAFF PRESENT**

John Batson, Building Inspector  
Josie Fitzgerald, Secretary

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

Chairman Ellen called the meeting to order at 7:00 p.m.

### **II. APPROVAL OF THE AGENDA**

**MOTION:** Member Galbraith moved to approve the Agenda  
**SECOND:** Member Moore  
**VOTE:** Unanimous

### **III. APPROVAL OF THE MINUTES**

**MOTION:** Member Moore moved to approve the minutes of February 3, 2016  
**SECOND:** Member Richardson  
**VOTE:** Unanimous

### **IV. PUBLIC COMMENTS**

None

## V. OLD BUSINESS

### A. Chapter 19-373(7) Political Signs – Text Amendment

Attorney Canoutas submitted language for P&Z to review for consideration to be recommended to Council.

- It was noted that Council had much to discuss at their meeting regarding political signs and if freedom of speech is violated.
- Council asked P&Z to take a look at the current Ordinance for compliance and recommend any changes.
- P&Z expanded the current ordinance in their draft of changes
- It was believed that not all members of Council understood the changes proposed by P&Z
- Council referred the draft back to P&Z to reword
- Attorney Canoutas believes the revised draft complies with State law and should fly with some minor changes; i.e. change four feet to six feet and 100 yards should be 50 feet
- There was much discussion and frustration resulting from media coverage
- Attorney Canoutas believes since this issue is in zoning ordinance, the changes need to come from P&Z.
- P&Z was merely trying to clean up the language as requested by Council
- The way the draft reads now complies with the Board of Elections.
- Any prohibition of a sign is unconstitutional.
- Content neutral would suffice for compliance with the First Amendment
- Another change should be to add “not” in the sentence: Political signs may not be erected within fifty (50) feet of the Town Hall or polling place...
- Signs cannot be on Kure Beach town property
- Further discussion regarding time limits; how soon can signs go up and when should they come down; time can be regulated as long as it is reasonable and constitutionally valid considering “one stop early voting,” primaries and general elections -- Law states 30 days beginning prior to one stop early voting and ending 10 days after the primary or general election day
- Board of Election says no signs within 50 feet of the polling place and the Board will enforce the rule
- It was recommended by attorney Eldridge that this issue seems to be Council’s baby and maybe P&Z should follow just what Council requested as drafted by attorney Canoutas and vote on it and send it back to Council
- The latest draft reiterates the State Election laws
- When draft is presented to Council the 30 day restriction can be noted for them to insert if they want it or not when it goes to public hearing

**MOTION:** Chairman Ellen moved to recommend to Council the draft as presented by attorney Canoutas with the changes discussed and noted as attached

**SECOND:** Member Richardson

**VOTE:** Unanimous

## **B. Vacation Rentals – Data collection**

Chief Cooper was not present to brief P&Z on status of complaint data collection  
This issue is tabled until next month

## **C. Container Housing**

- Chairman Ellen presented to Council what P&Z discussed and was working on language to recommend to allow container housing in the RA-2T district where trailers are allowed
- P&Z has two language options to present; one prohibiting and one allowing
- The meeting held in February was not actually a “public hearing” but an invitation for the public to offer their comments. Although Council requested a public hearing, it was a matter of semantics. The public was invited to come and comment on the issue to get feedback prior to P&Z making a recommendation to Council.
- There was discussion regarding definition of building, trailer, mobile homes, single family, etc.
- Attorney presented his legal opinion for two sets of language. In the language prohibiting containers the definition of building was modified to end the sentence after container, deleting the words “designed for use as a dwelling.”
- Container definition was broad to include any type of container and avoid additional types of containers being brought into the Town
- The draft prohibits shipping containers to be used for anything in Kure Beach
- Change definition of dwelling as “a building designed for residential purposes” and define containers and excluding containers from the definition of building.
- Does trailer definition need to be revised and clarified
- P&Z is trying to prohibit containers in other zones other than RA-2T
- To avoid revising other district uses, specific language needs to be used
- Attorney Eldridge cited a Supreme Court case where regulations of uses in zoning provisions need to be clear and specific. Kure Beach Sec. 19-78 (page 1216) may need to be revised. See what approach Council wants to take. P&Z needs to recommend striking that section per the Supreme Court Case so it doesn’t come back to bite you.
- Complex and presents legal risk which needs more work before presenting to Council. P&Z can check how other areas i.e. Chapel Hill and Cary are handling this issue.
- Other residential districts should be revised to prohibit certain uses in order to insulate from problem with the Supreme Court case.
- Revising all districts is a big undertaking
- In Chairman Ellen’s absence, Member Votta will attend the Council meeting on March 22<sup>nd</sup> to discuss the two language options as agreed by P&Z
- General Statute says mobile homes cannot be prohibited but can be regulated. Containers likewise can be regulated considering property values, being harmonious and not prohibit aesthetics.

The Container Housing issue to be tabled until April for further research

**VI. NEW BUSINESS:**

**VII. MEMBER ITEMS:**

Councilman Whitley stated that Council will discuss at the March meeting that P&Z needs an alternate member. They will change procedure to allow P&Z to conduct interviewing of candidates and recommendation to Council for approval.

**VIII. ADJOURNMENT**

**MOTION: Member Ellen moved to adjourn the meeting.**

**SECOND: Member Votta**

**VOTE: Unanimous**

**The P&Z meeting adjourned at 8:20 p.m.**

  
\_\_\_\_\_  
John Ellen, P&Z Chairman

  
\_\_\_\_\_  
Josie Fitzgerald, Secretary

## **PROPOSED TEXT AMENDMENTS PROHIBITING THE USE OF CONTAINERS AS DWELLINGS**

### **Chapter 19 Zoning**

#### **Sec. 19-1. Definitions**

1. Amending the definition for “Building” as follows:

*Building* shall mean a structure enclosed and isolated by exterior walls constructed or used for residence, business, industry, or other public or private purposes, or accessory thereto, and including tents, lunch wagons, dining cars, and trailers; provided that, however, the term building shall not mean nor be construed so as to include a container. The term building shall be construed as if followed by the words or part thereof.

2. Adding a definition for “Container” as follows:

*Container* shall mean any standardized shipping container used for intermodal freight transport. Also known as cargo or freight container, ISO or intermodal container, and shipping, sea, or ocean container.

#### **Commentary:**

1. Since Sec. 19-1 defines a dwelling as a *building* designed for residential purposes, then providing a definition for containers and excluding containers from the definition of a building achieves the intent of prohibiting the use of containers as dwellings.

2. Section 19-79’s provision prohibiting the use of any building or land for any use other than those listed or permitted for that district has been invalidated and nullified by the North Carolina Supreme Court in the case of *Byrd v. Franklin County*, \_\_\_ S.E.2d. \_\_\_. 2015 WL 6799552 (Nov. 6, 2015) Therefore, the regulation of uses in the zoning provisions needs to be clear and specific and any uncertainty will be resolved against regulation.

# PROPOSED TEXT AMENDMENTS REGULATING THE USE OF CONTAINERS AS DWELLINGS

## Chapter 19 Zoning

### Sec. 19-1. Definitions

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*Building* shall mean a structure enclosed and isolated by exterior walls constructed or used for residence, business, industry, or other public or private purposes, or accessory thereto, and including tents, lunch wagons, dining cars, and containers. The term building shall be construed as if followed by the words or part thereof.

2. Adding a definition for “Container” as follows:

*Container* shall mean any standardized shipping container used for intermodal freight transport. Also known as cargo or freight container, ISO or intermodal container, and shipping, sea, or ocean container.

3. Adding a definition for “Dwelling, Container” as follows:

*Dwelling, container* shall mean a container designed for residential purposes exclusively by one (1) family.

## Chapter 19 Zoning

### Sec. 19-177. Permitted Uses (in the RA-2T district)

1. Insert a new sub-section (3) as follows:

(3) Container dwellings

2. Renumber existing (3)-(7) as (4)-(8)

**Commentary:** The proposed amendments offer specific definitions for containers and container dwelling, limit container dwellings to use by one (1) family, and restrict the location of such uses to the RA-2T district.

KURE BEACH  
PLANNING & ZONING COMMISSION

Meeting Date: March 2, 2016  
Agenda Item# V. A.

Present to Town Council on:  
Date: March 22, 2016

PLANNING AND ZONING COMMISSION  
CONSISTENCY STATEMENT  
N.C. Gen. Stat. 160A-383

**(To be read into the record as a motion, seconded, and voted upon)**

         This recommendation is consistent with the objectives and policies of the Town of Kure Beach Land Use Plan adopted by Town Council September 27, 2006 (Adopted and Certified by Coastal Resources Commission November 17, 2006)

         This recommendation applies to Section          Part          of the Town of Kure Beach Land Use Plan

  X   Consideration of recommended text amendment to The Town of Kure Beach Code , Chapter 19 Zoning, Art.          Sec. 19-373 (7)

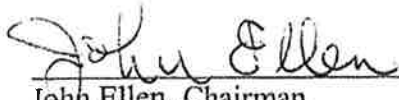
         This recommendation applies to the John Sawyer Architects B1 District Study (HPA 2007)

The Planning and Zoning Commission considers its recommendation to be reasonable and in the public interest based on the following:

1. Proposed text amendment consistent with codified sign regulations;  
\_\_\_\_\_
2. Content neutral;  
\_\_\_\_\_
3. Constitutionally valid.  
\_\_\_\_\_

Therefore, the Planning and Zoning Commission requests Town Council's consideration of the above recommendation.

Attest:

  
\_\_\_\_\_  
John Ellen, Chairman  
Planning and Zoning Commission

**Section 19 Zoning, Article VI Signs, Section 373 Exceptions, Subsection 7 Political Signs  
CURRENT CODE**

Temporary political signs may be erected on any privately owned premises. One may erect nonilluminated political signs prior to any primary or general election. Political signs shall be removed after the general or run-off election to which the sign pertains or after the termination of a candidacy, whichever occurs first. Political signs may not exceed six (6) square feet in size. Political signs will not be allowed within the right-of-way in the town limits or its extraterritorial jurisdiction, shall not be attached to trees or utility poles, shall not be roof-mounted, nor shall they be allowed on any publicly owned property. Political signs may be erected within one hundred (100) yards of the town hall or polling place twenty-four (24) hours prior to the scheduled election subject to limits imposed by the New Hanover County Board of Elections.

**PROPOSED AMENDMENT SHOWING TEXT CHANGES NOTED**

~~(1) Temporary political signs may be erected on any privately owned premises. One may erect nonilluminated political signs prior to any primary or general election. Political signs shall be removed after the general or run-off election to which the sign pertains or after the termination of a candidacy, whichever occurs first.~~ <sup>(2)</sup> *During the period beginning on the 30<sup>th</sup> day before the beginning date of "one-stop" early voting and ending on the 10<sup>th</sup> day after the primary, run-off, general or Election Day, political signs may be erected on any privately owned premises.* Political signs may not exceed six (6) square feet in size. <sup>(3)</sup> Political signs will not be allowed within the right-of-way in the town limits or its extraterritorial jurisdiction, shall not be attached to trees or utility poles, shall not be roof-mounted, nor shall they be allowed on any publicly owned property. <sup>(4)</sup> *Political signs in the extraterritorial jurisdiction shall be placed near the tree line from the edge of the road.* <sup>(5)</sup> Political signs may not be erected within ~~one hundred (100) yards~~ *fifty (50) feet* of the town hall or polling place twenty-four (24) hours prior to the scheduled election subject to limits imposed by the New Hanover County Board of Elections.

**PROPOSED AMENDMENT**

During the period beginning on the 30<sup>th</sup> day before the beginning date of "one-stop" early voting and ending on the 10<sup>th</sup> day after the primary, run-off, general or Election Day, political signs may be erected on any privately owned premises. Political signs may not exceed six (6) square feet in size. Political signs will not be allowed within the right-of-way in the town limits or any publicly owned property. Political signs in the extraterritorial jurisdiction shall be placed near the tree line from the edge of the road. Political signs may not be erected within fifty (50) feet of the town hall or polling place twenty-four (24) hours prior to the scheduled election subject to limits imposed by the New Hanover County Board of Elections.

**The above proposed amendment makes the following changes to the existing code. These changes were approved by council during their February council meeting**

- 1) Removes the first three sentences of current ordinance regarding temporary political signs on private premises, non-illuminated political signs, and non-specific time periods for political signs during primary, run-off and general elections.
- 2) Adds first sentence to specify time period that political signs can be erected on private property, before and after elections.
- 3) Revises language regarding specific placement of political signs in the extraterritorial jurisdiction (ETJ) to remove allowing them to be attached to trees, utility poles, roof-mounted.
- 4) Adds language to specify where political signs can be placed within the ETJ.
- 5) Revises the distance limit that a political sign can be erected near town hall or the polling place to no more than 50 feet.