



**KURE BEACH PLANNING & ZONING COMMISSION
REGULAR MEETING**

A regular meeting of the Kure Beach Planning & Zoning (P&Z) Commission was held on Wednesday, April 6, 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

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 Moore moved to approve the Agenda

SECOND: Member Richardson

VOTE: Unanimous

III. APPROVAL OF THE MINUTES

MOTION: Member Moore moved to approve the minutes of March 2, 2016 with a corrections on page 3 revising Sec. 19-79 to 19-78 as suggested by attorney Eldridge.

SECOND: Member Galbraith

VOTE: Unanimous

IV. PUBLIC COMMENTS

None

V. OLD BUSINESS

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

Member Votta stated that Council acted on the text amendment with modifications and P&Z will not have to discuss the issue of signs in the future

B. Vacation Rentals – Data collection

Chief Cooper stated that he had to make changes in data base and the way software works for rental property

- There are problems with long term rentals as much as short term rentals.
- His staff is being trained to differentiate the two types of rentals
- He wants to review this issue again in Sept after review of the collected data
- Officers can ask is the property is a rental, but it is not a law enforcement issue
- Sheriff's office create two types of documents; one for minor incidents like dog barking which is an Operation report or short record of what they did; another one is for a break in of a car and/or stolen wallet. This one requires a long report with much information and detail because it will be become a criminal matter
- Most complaints are noise, loud music, voices typically on weekends
- P&Z primary reason is to establish a permitting process for regulations in our Code and what constitutes a nuisance/violation and how to track it;
- The state law says no permit can be issued for a property unless it has no more than three (3) verifiable violation complaints in 12 months or is at the top 10% of crime or disorderly problems as set forth in the local ordinance. (not direct quote)
- Chief Cooper said he will attempt to track violations and complete report as soon as possible. He will need to work in correlation with the Building Inspector since some complaints overlap like illegal parking on property
- The Town will need to identify what is considered a nuisance and how to track

Realtors met and stated they want to get more involved and be positive advocates
What P&Z did last year opened eyes and Realtors did some self-policing of the problems

C. Container Housing

Attorney Eldridge submitted recommendations for the two options to handle this issue

1. Proposed text amendments prohibiting the use of containers as buildings. He tweaked the definition based on discussion last month striking out the limitation “designed for use as a dwelling.” No containers allowed in the town.
2. Proposed text amendments regulating the use of containers as dwellings. A container building shall not be designed for use as a dwelling.

- As discussed last month there can be a regulation for allowing containers in the RA-2T district but not in any other district

Attorney submitted a memo outlining his research regarding regulating unlisted uses

- It will be an almost impossible task to try to list every use and plug them into every district
- According to the Byrd decision unlisted use has been invalidated; rejected “a zoning ordinance may prohibit uses not explicitly allowed”
- Discussion regarding Sec. 19-78 which is the catchall provision.

1. Prohibited uses have to be specific and clear – Sec. 19-79.5 basically lists prohibited uses, internet gaming, adult dancing, etc. You could add containers as buildings expressly prohibited here.

2. To be effective, you have to keep up with uses as it seems the Town has been proactive as exemplified when dealing with internet gaming

- “the law favors uninhibited free use of private property over government restrictions” (Byrd v. Franklin County, ___ N.C. App. ___, 765 S.E. 2d 805, (3014) amending the zoning regulations to require that unlisted uses be reviewed as the most nearly similar use and provide staff with the guidelines and standards deemed necessary for making such determinations.”
- Unlisted uses can be deemed similar and would insulate challenges

Recommendation:

1. Prohibit containers
2. Allow containers only in RA-2T district
3. Add containers in the prohibited use section
4. Strike Sec. 19-78 from the Code referring to unlisted uses to eliminate problems

- Town can expressly prohibit uses you don’t want and reviewing and approving unlisted uses
- Or have guidelines as to what you will approve for unlisted uses not prohibit and review as a similar use to what is already allowed.

Important note: Since Sec. 19-78 is invalidated, then it is wide open and the Town needs a mechanism for approving/disapproving unlisted use that is not prohibited; unlisted prohibited uses can be treated as a similar permitted use

For the present time P&Z can deal with containers and then later deal with Sec. 19-78 since it is believed that Council is aware of the issue

MOTION: Member Galbraith moved to present to Council the language for text amendment prohibiting the use of containers as buildings in Town of Kure Beach as suggested by Attorney Eldridge and adding to Sec.19-79.5 prohibiting containers as buildings

SECOND: Member Richardson

VOTE: Unanimous

MOTION: Member Galbraith moved to present to Council the language for text amendment regulating the use of containers as dwellings in the RA-2T district for residential purposes and strike Sec. 19-78 from the Code as suggested by Attorney Eldridge
SECOND: Member Votta
VOTE: Unanimous

VI. NEW BUSINESS:
None

VII. MEMBER ITEMS:
A. Summer schedule - discussion to cancel July meeting due to vacation conflicts

MOTION: Member Ellen moved to cancel the July 6, 2016 meeting
SECOND: Member Second Votta
VOTE: Unanimous

B. An application for Alternate member was received from John Cawthorne
The process for interviewing was not clear so Chairman Ellen will follow up regarding the procedure to follow

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