



KURE BEACH PLANNING & ZONING COMMISSION REGULAR MEETING

A regular meeting of the Kure Beach Planning and Zoning Commission was held on **Wednesday, May 3, 2017**. A quorum of commission members was present.

P&Z MEMBERS PRESENT

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

P&Z MEMBERS ABSENT

Alternate Member John Cawthorne

STAFF PRESENT

John Batson – Building Inspections
Kathleen Zielinski – Secretary

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Councilman Joseph Whitley, Liaison  
Attorney James E. Eldridge

### **1. CALL TO ORDER**

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

### **2. APPROVAL OF AGENDA**

**MOTION** – Member Galbraith moved to approve the meeting Agenda

**SECOND** – Member Richardson

**VOTE** – Unanimous

### **3. APPROVAL OF MEETING MINUTES**

**MOTION** – Member Votta moved to approve the minutes of March 1, 2017

**SECOND** – Member Moore

**VOTE** – Unanimous

### **4. PUBLIC COMMENTS**

Chairman Ellen explained that during old business on the agenda the committee will be discussing fences, fence heights and exotic animals. Public comments can be offered on those issues at that time. Anyone with public comments pertaining to issues besides those are welcome to speak at this point in the meeting.

Russell Gates was recognized. He moved here three years ago, owned his home for 16 years. During renovations was he told that the state has a 20' right of way in the front of his property and the town has utility easements of 10' on the side. He installed a pergola on a concrete slab that sits in the back portion of his property that has been there for 20-30 years, but has since learned that his pergola is in violation because it sits only seven feet from the back of the property and it needs to be 10 feet from the back. He wrote a letter concerning his opinion of what a pergola is as it pertains to zoning and he is asking to have his pergola permitted where it is. He also offered the letter he wrote along with pictures, which the committee accepted and reviewed.

Building Inspector Batson explained the setbacks and acknowledged that Mr. Gates' pergola is indeed in violation of town ordinance. He suggested that Mr. Gates request a text amendment to the ordinance for setbacks. Mr. Gates offered that the pergola consists of four posts and an open roof which, in his opinion, does not constitute a structure.

Member Galbraith asked for the definition of structure. Inspector Batson read from the code of ordinances that structures shall mean anything constructed or erected, the use of which requires location on the land including freestanding billboards, signs and fences. The term structure shall be construed as if followed by the words, or part thereof.

Chairman Ellen asked for clarification that you can put a fence on the property line but not a structure. Inspector Batson said Sec. 19-320 states that any structure requiring a building permit shall not be permitted in the setback area with the exception of the following items: a fence and a beach walkover.

Another resident in attendance spoke up to say that he would be visiting Inspector Batson to request a text amendment regarding his own property.

Attorney Eldridge questioned what exactly the text amendment would look like.

Discussion followed about what things might be considered a structure. Suggestions included a Jacuzzi, sheds, doghouse, and livestock enclosure.

Mr. Gates respectfully added that if he cannot do anything on the front because of the state and can do nothing on side because of the town he would like to use the little slab that was there when he purchased his home to put four posts with an open air top. He added that he has gotten several compliments on it, it does not interfere with the town's quality or safety, is well built and he feels it improves the area which improves the town.

Member Richardson asked the other resident if his text amendment would cover pergolas to which he replied that his text amendment would pertain to accessory sheds.

Attorney Eldridge explained that this body has no discretionary authority and there are procedures to follow in the process of creating a text amendment. You have to go through the application process and review process then have Town Council consider the request.

Member Galbraith would like to simplify the process and add this topic as an agenda item for the Committee's next meeting. He would like to come up with a clear recommendation for Town Council based upon a general discussion of structures and setbacks so that this body can propose a text amendment request.

**Motion:** Member Galbraith moved to add an agenda item for the next meeting to discuss structures and rear setbacks.

**Second:** Member Richardson

**Vote - Unanimous**

Discussion followed when Member Richardson asked about the other resident who spoke. Does he also have to request a text amendment or wait until next meeting's discussion? While the topic is under consideration and stays on the agenda there will be no code enforcement action. Member Votta stated that this will not be decided in one meeting. There will be lots of discussions about many elements that need to be looked at. Many things in our ordinances were written 40 years ago and require being looked at and updated as needed. The Committee requested input from Inspector Batson on this issue as well.

## 5. OLD BUSINESS

### a. Fences and fence heights

Chairman Ellen asked if there were any further comments before presenting the committee's proposed fence height change at the next Town Council meeting.

Attorney Eldridge recalled that the committee is satisfied, and there should be no issue about the definition of back yard because it is already defined elsewhere in the code.

**Motion** – Member Moore moved to send the new fence height recommendation to council for their approval.

**Second** – Member Votta

Member Galbraith clarified for a resident that the back yard boundary runs from the back of the house out to side property line and back to the rear property line

**Vote - Unanimous**

## **b. Livestock and exotic animals**

Chairman Ellen reported that he presented the proposal for a new ordinance regulating livestock and exotic animals to Council and was met with many questions. There were some very nice people in attendance who addressed the exotic animal part of this ordinance change. A couple of monkey owners gave a passionate plea not to outlaw their monkeys. Council asked Chairman Ellen to go back and have the committee relook at the wording in the proposed ordinance.

Attorney Eldridge said he read the excerpt from Town Council meeting minutes and was trying to understand what happened. The definition of exotic animals has a reasonable person standard in it and the definition reads in part that if it reasonably imposes a danger then it is exotic. Taking monkeys for an example; if the monkey is not dangerous it is not to be considered exotic. What does Council want the Committee to do about the permitted table regarding livestock? Do they want a comprehensive list of permitted animals or leave the text as is with the understanding of the reasonable person standard?

Member Galbraith pointed out that the issues raised by Council are exactly what was discussed over the past several months by P&Z. The committee thought about these issues and agreed that the reasonable person opinion of what represents exotics replaces the need for an all-inclusive list, which would be difficult to do since there are potentially hundreds of animals that could be included. So leave the decision to the discretion of the Building Inspector with the obvious option for appeal to Council.

Attorney Eldridge offered to call attention to two items before further discussion:

- In the definition of exotic animals there is a phrase in the last line that "shall include" and monkeys in there.
- Animals that are neither exotic nor livestock would fall into the category of pets. How do we address pets? For example, a monkey as a pet does not cause a danger and is therefore not exotic. For pets, there is no code restriction. The Committee may want to take out monkey and let the reasonable person standard take effect.

Town Council Member Bloszinsky was in attendance and offered that in discussions with some residents he heard concerns about having a dangerous animal for a pet.

Attorney Eldridge commented that a pet is an animal. According to the definition, if that animal reasonably poses a potential danger then it is exotic. If you have a pet that does not pose a danger, then it is not exotic

Member Galbraith had known of owners in CA who had a variety of dangerous animals such as lions, tigers and jaguars as pets and some pets turned on the owners after years of being domesticated. He feels very cautious about trying to define pets for that reason. Having an appeal process is very important in case someone disagrees with the Building Inspector's decision.

Council Member Bloszinsky described the convoluted discussion that occurred at the Council meeting and feels that clarifying here will benefit everyone when P&Z brings

this forward again. He added that individuals were looking for a defining list of what animals are permitted but agreed that logic should be used.

Chairman Ellen observed that some Council members got hung up on the blanket statement that exotic animals are not allowed.

Attorney Eldridge reminded all that it is not exotic if it does not pose a danger. He added that making a list will inevitably leave something out. The courts will always uphold the reasonable person standard. They will rule on what is reasonable over what is based on subjected criteria.

Member Votta noted that this all started because a little girl wanted four little chicks. Can this be as simple as if you want exotic animals or livestock they need to be indoors?

The monkey owner in attendance disagreed, saying that he should have the right to have his monkey sit outside with him on his deck. To which Member Votta stated that everyone has to be responsible.

Member Galbraith still thinks the ordinance is well written and just needs to be explained better regarding the reasonable person argument and that the Building Inspector has discretion. He is nervous about revisiting the definition and trying to make the list longer.

Attorney Eldridge asked if there is consensus to take monkey out.

**MOTION** – Member Galbraith moved to strike monkey in the definition of exotic animal

**SECOND** – Member Richardson

**VOTE** – Unanimous

**SECOND MOTION** – Member Galbraith moved to send the proposed ordinance back to Council with revisions; to remove monkey from the definition and change Town Inspector to Building Inspector

**SECOND** – Member Richardson

**VOTE** – Unanimous

## **6. NEW BUSINESS**

Member Galbraith reported that he had several interesting discussions about the container home issue in Carolina Beach. He understands that the owners are asking \$280,000 per container for sale. Currently they are producing income as weekly rental properties.

Chairman Ellen commented that there are countries all over the Pacific using containers for everything, particularly for living. No heat needed. Situated in a very free flow environment.

## 7. MEMBER ITEMS

Building Inspector Batson requested the Committee read Chapter 19 - Zoning, Article IV – Supplemental District Regulations of the Code of Ordinances in advance of discussion regarding setbacks and structures.

Member Galbraith welcomes Inspector Batson's recommendations from his perspective of what are the major issues and what changes he would like to see, if any.

## 8. ADJOURNMENT

**MOTION** – Member Galbraith moved to adjourn the meeting.

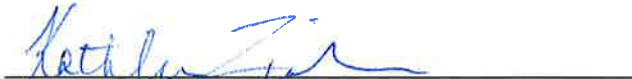
**SECOND** – Member Moore

**VOTE** – Unanimous

The meeting adjourned at 7:50 p.m.



John Ellen, Chairman  
Planning and Zoning Commission



Kathleen Zielinski, Secretary