



PLANNING & ZONING COMMISSION MINUTES

REGULAR MEETING

Wednesday, June 7, 2023 @ 6:00 pm

The Kure Beach Planning and Zoning Commission (PZC) held its regular meeting on Wednesday June 7, 2023. A quorum of members was present and Attorney Jim Eldridge attended.

P&Z MEMBERS PRESENT

Chairman Byron Ashbridge
Vice-Chair Joe Barlok
Member Craig Galbraith
Member Tony Garibay
Alternate Member Connie Mearkle

P&Z MEMBERS ABSENT

Member Jim Dugan

STAFF PRESENT

Beth Chase, Deputy Town Clerk
John Batson, Building Inspector

COUNCIL LIAISON PRESENT

Commissioner Dennis Panicali

CALL TO ORDER

Chair Ashbridge called the meeting to order at 6:00 p.m.

ADOPTION OF AGENDA

MOTION- Member Galbraith made a motion to excuse Member Dugan from the meeting

SECOND- Member Barlok

VOTE- Unanimous

MOTION- Member Galbraith made a motion to amend the agenda to add Discussion of Beach Property Rights and adopt the agenda as presented

SECOND- Member Barlok

VOTE- Unanimous

APPROVAL OF MEETING MINUTES:

- April 5, 2023 Regular Meeting

MOTION- Member Barlok made a motion to approve the minutes as presented

SECOND- Member Galbraith

VOTE- Unanimous

PUBLIC COMMENTS

None



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OLD BUSINESS

1. Continued Discussion of Batteries Used for Electricity Storage in the Setbacks

Chairman Ashbridge stated this item needs to be tabled to next month.

MOTION- Member Galbraith made a motion to table the item to the July agenda

SECOND- Member Barlok

VOTE- Unanimous

2. Discussion on Proposed Text Amendments for 15.02.010, 15.08.040, and 15.08.050

Attorney Eldridge commented he met with Chairman Ashbridge, Member Barlok, Commissioner Panicali, and a consensus was reached that instead of deleting the SIC Codes reference would treat the SIC codes as guidelines when reviewing permitted uses. The Commission needs to keep that in mind as they review the proposed text amendments as presented as there is still more work to do. Attorney Eldridge reviewed the proposed text amendments that are hereby incorporated into the minutes.

3. Review and Report on Permitted Uses in the following Districts: RA-3, RA-3A, RA-4, and B-1

Attorney Eldridge reviewed the proposed text amendments to the following districts RA-3, RA-3A, RA-4, and B-1.

PZC Consensus to Change:

- Under RA-3 delete sections C & D
- In RA-3A Change C to Tourist Lodgings delete sections D & E
- RA-4 delete section C

MOTION- Member Galbraith made a motion to recommend Town Council to adopt the proposed text amendments with the changes discussed above

SECOND- Member Garibay

VOTE- Unanimous

MOTION- Member Galbraith made a motion to approve the consistency statement as presented

SECOND- Member Garibay

VOTE- Unanimous



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NEW BUSINESS

1. Discussion of Beach Property Rights

Member Galbraith commented he had read the article “Deeds filed for Atlantic Beach dunes lead to access dispute” that is hereby incorporated into the minutes. The article mentions how a citizen registered quitclaim deeds for multiple parcels and his claiming he owns the dunes and other citizens are now trespassing. He does not think the Commission needs to do anything at this time but just wanted to bring it to the Commissions attention.

Attorney Eldridge commented to claim a quitclaim deed it has to be delivered to the individual so he would like to know who gave the quitclaim deed and see the deed.

2. Discussion of Permitted Uses for the following districts: RB-1, B2, B3, B4

The PZC reviewed and held discussion on the Permitted Uses for the following districts: RB-1, B2, B3, B4 and made the following recommendations:

- B2- Change B to Tourist Lodgings, Under D amend wording to Light retail see KBC 15.02.010 for definition (Retail, miscellaneous), Under G amend to say “Businesses providing rental services which will not create a public nuisance; Under H add the following statement Establishments engaged in the business of renting, purchasing, selling, managing, or appraising real property
- B-3 - Delete all sections expect A, B, and P
- RB-1- Delete all sections expect A & B and add the statement under P from B-3 “Noncommercial recreational facilities, such as clubhouse, swimming pool and tennis court.”
- B-4 - Delete sections B & C

MOTION- Member Galbraith made a motion to direct Staff to make the recommended changes as discussed and bring back next month for review

SECOND- Member Dugan

VOTE- Unanimous

CLOSED SESSION

None.



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ADJOURNMENT

MOTION- Member Galbraith made a motion to adjourn the meeting

SECOND- Member Barlok

VOTE- Unanimous

ATTEST: Mandy Sanders
Mandy Sanders, Town Clerk

Byron Ashbridge
Byron Ashbridge, Chairman

NOTE: These are action minutes reflecting items considered and actions taken by Planning and Zoning Commission. These minutes are not a transcript of the meeting. A recording of the meeting is available on the town's website under government>planning and zoning.

PROPOSED TEXT AMENDMENTS TO KBC 15.08.040; .050: USE OF SIC CODES

(For PZC Discussion)

(Proposed amendments are set forth in red)

15.02.010 Definitions

1. Delete definitions for "Industry No." and "Industry Group No."
- 2, Add definitions for "Adult book and video stores," "adult oriented dancing," and "internet gaming devices."

15.08.040 District Regulations

A. Within the districts as indicated on the zoning map, no building or land shall be used and no building shall be erected or altered which is intended or designed to be used in whole or part for any use other than those listed as permitted for that district. A building or the use thereof may be considered changed when its form of occupancy or operation is substantially changed beyond those permitted uses as specified within the designated districts. More than 1 permitted use may be located on a particular site or within a particular building.

B. Special uses, with appropriate conditions, may be permitted in zoning districts where those uses would not otherwise be allowed. The special use permit procedures are set forth in 15.08.080 and except as otherwise provided in subsection C herein, special uses requiring a permit are identified with an "S."

C. Uses which are listed shall be liberally interpreted to include non-listed uses which have similar characteristics. A use that is not listed and that does not have characteristics similar to those of a listed use shall be interpreted as a use requiring a special use permit under the provisions of KBC 15.08.080 herein.

D. The Standard Industrial Classification ("SIC") code references in this chapter are for illustrative purposes only. In the event of a conflict between the chapter's text and the SIC codes, the chapter's text shall control.

15.08.050 Uses Which Are Prohibited

The following uses are prohibited:

Adult book and video stores: ~~SIC codes 5731, 5192, 5947, 5932, 5942 and 5961.~~

Internet gaming devices: ~~SIC codes 7993 and 7999.~~

Adult oriented dancing: ~~SIC code 7911.~~

The use of containers as buildings.

Habilitation/rehabilitation facility.

Halfway house.

Homeless shelters.

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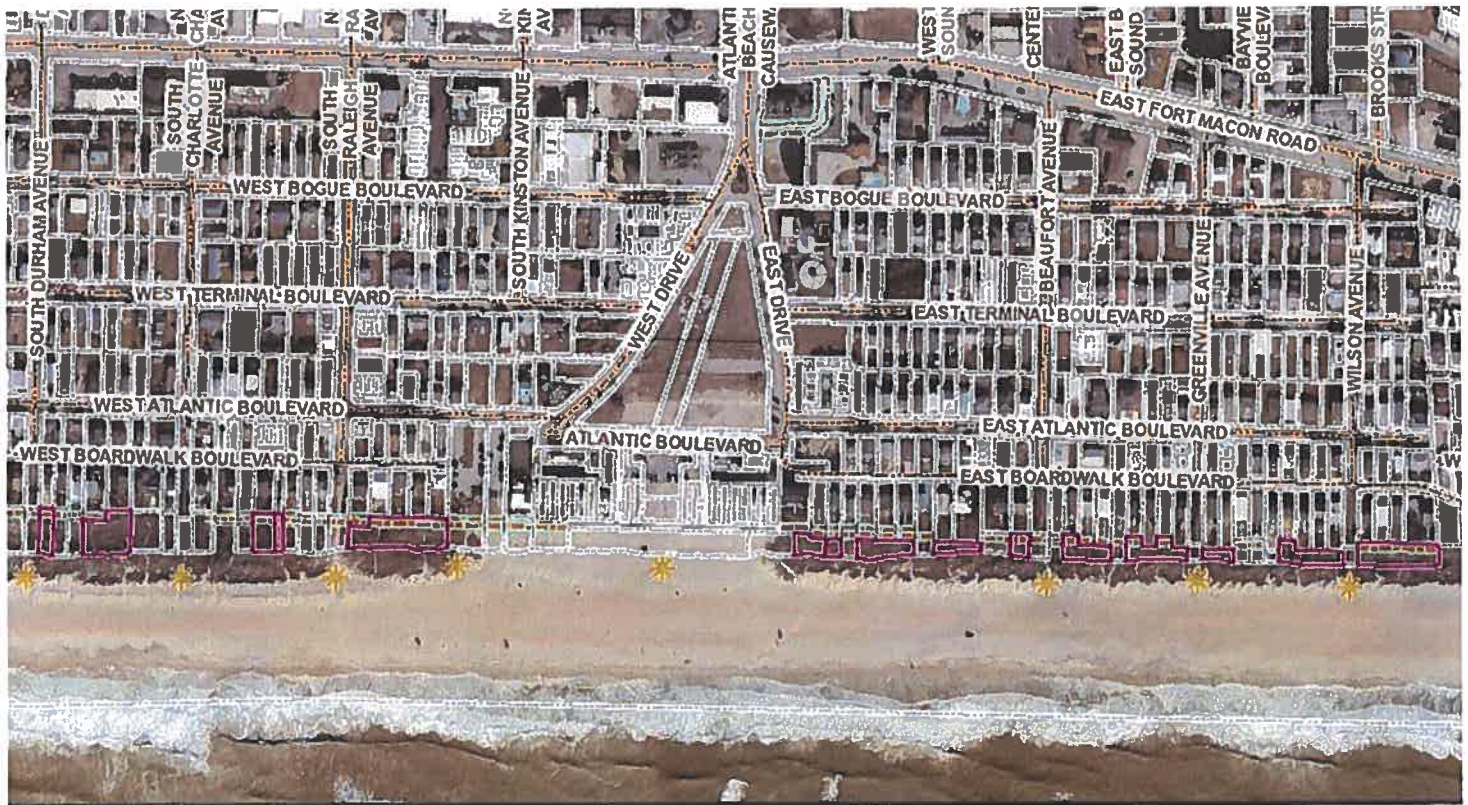
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(<https://coastalreview.org/>)

Deeds filed for Atlantic Beach dunes lead to access dispute

05/16/2023 by [Mark Hibbs](https://coastalreview.org/author/markhibbs/)



James Anthony Bunn has registered quitclaim deeds for more than a dozen parcels in Atlantic Beach, shown here with magenta borders, oceanward of beach houses and condominiums to the east and west of the boardwalk at the former amusement circle. Image: Carteret County GIS

ATLANTIC BEACH – Numerous oceanfront property owners here are banding together in a developing legal dispute over who owns the dry sand beach in front of their houses.

An attorney representing the owners said last week that he hopes the state attorney general will intervene to protect the public's rights.

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The dispute arose last month after a Cape Carteret resident, who also has an apparently dormant real estate business website (<https://www.realtor.com/realestateagents/56745b117e54f701001e6f23>) for a firm in Wilson, notified the beachfront property owners and others that he now owns the dunes and that their continued access to the beach amounts to trespassing.

James Anthony Bunn in April registered quitclaim deeds with the county for more than a dozen parcels in Atlantic Beach south, or oceanward, of beach houses and condominiums to the east and west of the boardwalk at the former amusement circle. Bunn's mailing address is 102 Hunting Bay Drive, Cape Carteret, according to county records. Last year, he also registered deeds on parcels in Down East Carteret County.

All show sales prices of zero dollars or minimal exchanges, such as \$10 in consideration, with no county revenue stamps paid. Attorneys who prepared the deeds noted that no title work was requested or performed.

Unlike warranty deeds, quitclaim deeds in North Carolina carry no guarantee of title.

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Some of the individual oceanfront parcels that Bunn claims to own front multiple beach houses — one as many as five separately owned homesites.

Attorney Rob Wheatly of Beaufort is representing some of the Atlantic Beach property owners whom Bunn had notified of his claim of ownership.

"First, he started by sending out a statement. I don't know if he sent it to everybody, I know that a couple of people showed me what they had. He wanted them to sign some agreement with him, sort of like a lease where they would be able to continue to go on about the property. He was not going to interfere with their use if they in fact signed that paper. The people we talked to, we told them not to sign it for various legal reasons," Wheatly told Coastal Review Friday.

Wheatly said that because nobody would sign the agreement, Bunn had since been "stepping it up" to the point where he had posted "no trespassing" signs and was telling people who were accessing the beach that they were trespassing.

Oceanfront property owners told Coastal Review that Bunn was wearing a gun on his hip during their interactions with him. Some described cordial conversations, but others said Bunn acted in an intimidating or threatening manner, allegedly calling one homeowner a "chickenshit," and that his going armed on the public beach, in the presence of families with children, was out of line.

Coastal Review has obtained two police incident/investigation reports dated April 18 and April 27 involving "verbal disputes" between Bunn and other individuals. Some information in the police reports was redacted.

Bunn, when reached for comment, said his intention in claiming ownership was for his “quiet, personal enjoyment.” He said he had tried unsuccessfully to work with the oceanfront property owners. Bunn then said he didn’t want to answer Coastal Review’s questions and hung up. He then called back shortly after and agreed to answer questions but only by email.

In his email response to Coastal Review’s questions, Bunn said he was, “in the process of evaluating my land for a suitable location to develop a non profit low impact site to provide a covered structure with bathroom facilities, running water electricity and private parking to be used by physically or mentally impa(i)red individuals who could not otherwise peacefully enjoy a day at the beach.”

Bunn did not respond to further questions, including whether he had formed a nonprofit or partnered with an existing organization to provide such services. He also did not respond to questions regarding any discussions he might have had with town officials or staff with the state Division of Coastal Management regarding his development plans.

Atlantic Beach Mayor Trace Cooper told Coastal Review last week that the strip of dunes was once part of a tract known as the Musgrave property, but that land had completely eroded away decades ago.

“I don’t think they are lots anymore. These kinds of ocean parcels have been on the tax maps for a while, but my belief, based on what I remember as a kid in the ’70s and what I’ve heard from everybody, is that those areas eroded away before we began our beach nourishment program. The first beach nourishment was in 1979, and there’s a state statute on point that says oceanfront, basically beaches, if it is created through a publicly funded beach nourishment project, that sand is property of the state, and all the public trust rights that would apply to other parts of the beach would apply to that,” Cooper said.

According to state law, the title to land in or immediately along the Atlantic Ocean raised above the mean high-water mark by publicly financed beach nourishment projects “shall remain open to the free use and enjoyment of the people of the State, consistent with the public trust rights in ocean beaches, which rights are a part of the common heritage of the people of the State.”

Wheatly agreed that the ocean had decades ago washed away the beach, he said up to a seawall that had been placed there sometime in the mid-1950s. The beach has since been nourished several times with sand from the shipping channel in Beaufort Inlet.

Wheatly said that's referred to as "avulsion," where, in this case, there's a sudden throwing up of spoil next to the ocean or a river, "and by statute that becomes property of the state of North Carolina," he said.

"The big issue is going to be where these dunes have now been created through the years, or the neighbors putting sand fences or these sorts of things," Wheatly said. "And of course, the neighbors have been walking across the area down to the water all these many years, and they would have what is referred to as a prescriptive easement to go from their property down to the beach, and that requires a 20-year use. So, if it's not the state of North Carolina's public trust lands, then these people certainly would have a prescriptive easement to go to and from their properties the way they've been going all those many years."

Cooper said no town-owned properties are involved in the dispute, only privately owned homes and condos.

"My guess is that he's trying to be big enough of a problem that these homeowners may just want to pay him off," Cooper said. "The town is trying to do what we can, but it's essentially a private property dispute. We are not allowed to spend public money for private benefit, so we couldn't be the lead plaintiff in this, even if we wanted to be. We probably don't have standing, but we're standing by to do anything we can to help these homeowners put this issue to rest."

Wheatly said that in his discussions with Atlantic Beach town attorney Derek Taylor, the dispute amounted to a beach access issue for the town.

"I would assume the people that live on the second, third, fourth rows walk through these areas and paths and on all roads going down to the beach. But it can be a real mess, and especially for these renters when they rent their houses, and the guests come there and, all of a sudden, they're walking down to the ocean and see a sign saying 'no trespassing.' It could be a real detriment to everybody," Wheatly said.

Wheatly said he had spoken about the dispute with the Division of Coastal Management, who had recently put him in touch with the State Property Office.

"We really don't know where we're going in this yet, but I assume that eventually, maybe the attorney general will come in and protect the public. If not, then there will probably have to be private litigation," Wheatly said.