



**Minutes
Town of Atlantic Beach
Board of Adjustment Meeting
January 21, 2014**

The regularly scheduled meeting of the Atlantic Beach Board of Adjustment was held January 21st at 7:00 p.m. in the Town Hall Boardroom.

Members Present:

Markey Burroughs
John Lotspih

Alternate Members Present:

Vada Palma
Cynthia Chamblee
Judy French
David Cox

Members Absent:

Gary Plough
John Kurek, Chairman
Gene Waltz

Also Present:

Jessica Fiester, Planner
Derek Taylor, Town Attorney
Kim Tynes, Secretary
Bob Chambers, Building Inspector/Planner, Newport
Dennis Barber, Mayor, Newport
Bill Corbett, BOA Newport
Dwight Turner, GIS Newport & BOA for Carteret County

CALL TO ORDER

Jessica suggested that Markey Burroughs lead the meeting in the absence of John Kurek, Chairman. Meeting was called to order by Markey.

OATHS of OFFICE

Oaths of Office were administered to new Board of Adjustment members Vada Palma, Cynthia Chamblee and Judy French. An oath was also administered to John Lotspih swearing him in a member now, no longer an alternate.

APPROVAL OF MINUTES

Markey Burroughs made a motion to approve the minutes from the October 21, 2013 Board of Adjustment meeting. Motion was seconded by Vada Palma and John Lotspih and the vote was unanimous. Motion carried.

OLD BUSINESS

None

NEW BUSINESS

Derek Taylor, Town Attorney presented training session for new BOA members.

The handbook from the Institute of Government, "The Zoning Board of Adjustment in North Carolina", issued in 1984 is still considered "The Bible" for rules to follow and the best resource for BOA members.

City Government is closest to Judicial as BOA members are the judges for the cases presented. BOA does not write laws and can't change laws. They shall follow quasi-judicial procedures when deciding appeals and requests for variances and special and conditional use permits. The board shall hear and decide all matters upon which it is required to pass under any statute or ordinance that regulates land use of development.

Board is appointed for a 3 year term per the law.

Applications are turned in to the Planner. Meeting is open for Public Comment. Each witness will be sworn in and the Board will listen to all evidence provided and reach a decision.

Each case starts with a blank slate and no investigations can take place on your own. Both sides are privy to all information. There are no secrets. Small towns make it impossible at times not to hear information. Should something unavoidable be learned by you, disclosing the information must take place by sharing with all parties and the rest of the board. A member may share with Planner and have planner send out information to all parties or share at next meeting. This meeting is like a day in court with both sides presenting evidence. Ordinances were changed to adopt standard requests.

Conditional Use Permits - Checklists will be provided and the burden of proof is on the applicant to meet conditions set forth. Neighbors affected should be invited to meeting. Always ask the following: how does request effect neighbors and is property devalued as is?

The checklist is approved by staff and the TRC (Technical Review Committee) which consists of the Town Manager, a Council member, Planner, Building Inspector, Fire Marshall, Police Department and representative from the Carteret County Health Department to be sure all requirements are addressed. Once approved by the TRC, the Planning Board will review the application and provide comments or suggestions. Any of the above mentioned members may suggest additional options. The application has been thoroughly reviewed by the time it reaches the BOA. A Planning Board member will present the application to the BOA and they will then hear from the applicant and opponents/proponents.

Variances are only considered if there is something peculiar about the property and they are very tough to get. Must be a strong case to grant variance as it does not follow ordinances in place. Without this variance is there no reasonable use for the property? The property should be able to match the neighborhood, not exceed it. Town should allow ordinances to be fair to all property owners as it pertains to their property. For example, if DOT took a piece of the property and now property will not meet guidelines. Problems will not be created by the owners. BOA must interpret what ordinance is designed to say and what facts apply. Keep in mind what the Council had in mind when they created the ordinance.

Voting used to be 4 of 5 vote yes to pass; now 3 of 5 can pass with a yes vote. A majority of the members shall be required to make decisions or to determine an appeal. As a board member, you are an independent body and can be sued by the Town/County/Applicant, etc. from either side for mistakes.

A member of any board exercising quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Members shall not have a fixed opinion prior to hearing the case, shall not talk about the case outside of the meeting, shall not have close relationship of any type with the affected person and shall not have any financial interest in the outcome. Member must excuse you.

Always stick to the point in asking relevant questions for evidence. If the Town attorney has to ask questions, you are not doing your job as you should cover all bases. Applicant must prove criteria as decision is made on all criteria presented. Info must be rejected if non-compliant. If you are not sure about any aspect, ask questions until you are confident. Be convinced! The applicant's opinion is not enough, there must be evidence presented to support the facts. Make applicant convince you why this is a problem. Is it a nuisance? Does it belong in this neighborhood? Always work within the laws of the State of North Carolina. Doesn't matter if there are 60 angry people protesting or supporting an idea, shall not sway from the facts when making decision.

Property evaluations must be from an appraiser or an expert. Provide case facts from similar neighborhoods and experiences. Decision can't be an opinion, must be evidence of factual data. Example would be traffic study, expertise, hired expert to present testimony for applicant and /or opponent.

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Only people directly affected by proposal may speak to the BOA regarding application. Do not allow comments from any others not without direct impact from proposed changes. The Chairman will ask questions of the applicants, experts, etc. Applicants can question opposition just like a cross examination. Continue to ask questions until you have all the answers needed. You must deny the application if ALL points are not met.

The panel deliberates, once a decision is made, they create a written record of evidence. This could go as high as Superior Court to appeal and they will review how the decisions were made. The Court may send it all back as ask you to review the case again, or make a separate decision of their own based on written records/minutes of meeting. Be sure all evidence is on record.

All testimony is sworn in as factual. Oath administered by the Chairman prior to speaking. "Hear say" is not accepted, no letter will accepted into evidence without the author present. The BOA can hear it, without objection, but can't use it unless able to cross examine. Must be fair to both sides.

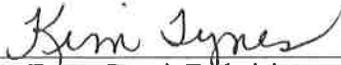
Regarding Conflict of Interest – everyone has a fair shot; you must remove yourself if not open minded to application. If applicant has issue/conflict, the BOA can vote. If conflict comes out later in court, case will be thrown out.

The Town Attorney will help keep you on track. At any time if the Town Attorney is in the audience, representing the Town, another attorney will fill in to guide the BOA.

ADJOURNMENT

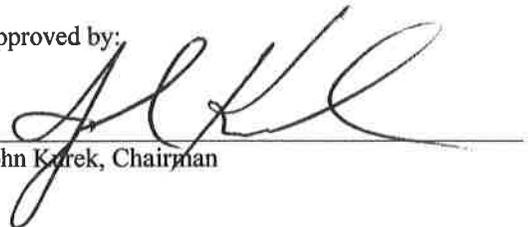
There being no further business, Markey Burroughs made a motion to adjourn the meeting with a second by Vada Palma and David Cox, with a unanimous vote.

Respectfully Submitted,



Kim Tynes, Permit Technician

Approved by:



John Kurek, Chairman