



**Minutes
Town of Atlantic Beach
Board of Adjustment Meeting
October 21, 2013**

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

Members Present:

Gary Plough
John Kurek, Chairman
Markey Burroughs
John Lotspih
David Cox

Alternate Members Present:

Gene Waltz

Also Present:

Jessica Fiester, Planner
Derek Taylor, Town Attorney
Kim Tynes, Secretary

CALL TO ORDER

Meeting was called to order by John Kurek, Chairman.

Jessica suggested a motion to appoint John Lotspih to the board to fill vacant position left by Sam Rich. Markey Burroughs made the motion, seconded by David Cox and the vote was unanimous. John Kurek made a motion to appoint Gary Plough as Vice Chair. Markey Burroughs and David Cox second the motion and the vote was unanimous.

OATHS of OFFICE

Oaths of Office were renewed for John Kurek and Markey Burroughs.

APPROVAL OF MINUTES

John Kurek made a motion to approve the minutes from the June 18, 2012 Board of Adjustment meeting. Motion was seconded by David Cox and John Lotspih and the vote was unanimous. Motion carried.

OLD BUSINESS

None

NEW BUSINESS

Derek Taylor, Town Attorney presented minor changes to BOA Legislation.

Oaths were administered by the Chairman in the past and can now be administered by the Secretary to the Board.

BOA can issue legal subpoena to require a witness or document be present. Always had the power, just did not use it. If information is needed to reach a decision, the Chairman can issue the subpoena with the full support of the Board. The Chairman would coordinate process with Town Attorney. This applies to the applicant and the opponent and must be relevant in

nature. Information cannot be oppressive to weigh out relative information. Information cannot contain "hearsay", direct evidence and correlation, must be of substance and may be used to prove a point. Experts may be required to reach decision.

Decisions must be in writing stating why and the evidence used to reach the decision. The decision must be signed by the Chairman. If there is an appeal process, hearing tapes must be held for 30 days after an appeal. At the hearing, be sure all questions are answered. Facts on standards must be described. Jessica will print a list with both sides presented. The two sides cannot converse on topic but each side can discuss with Jessica separately. Each item is voted on. Restating the standard is not enough, must ask why. Popularity is not a decision factor. If criteria and standards are met, BOA must allow.

Regarding Variance and Special Use, the law states an expert must present facts and decision must be made in "reasonable time". BOA must grant or deny in 10 days. Once decision is made, signed by Chairman and delivered to Clerk, it is effective.

Appeals go thru Clerk, with findings from Planner.

If both sides have items A thru E and Item F is presented, one side is unprepared. Evidence can be allowed but presented to opposition. There is a 30day appeal window once final decision is presented. "Quasi Board" will make no decision until all evidence is presented and there can be no hidden agendas.

Regarding Special Use, simple majority wins and is sufficient. Number of vacant seats allowed is the same, no votes counted if alternate is not present.

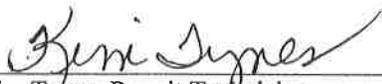
Variances should not be given frequently. Do not trump a Council decision without very good reason. What are the neighbors able to do? Is there a reason use of property? What is fair? Does the lot cut off or drop off in the back? Is it peculiar in some way? Variances cannot be granted as a result of a self created problem. If buyer knows of problem and buys property regardless, the buyer is allowed to approach the BOA.

There is no such thing as a Use Variance. Zoning ordinance says no – however they can address a set backs. Keep in mind what the Council had in mind when they granted the Ordinance. Important question to consider is "can a fire truck approach?" BOA can provide conditions and can cancel if conditions are not met.

ADJOURNMENT

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

Respectfully Submitted,



Kim Tynes, Permit Technician

Approved by:



John Kurek, Chairman