



Town of North Topsail Beach
Zoning Board of Adjustment Special Meeting
Wednesday, March 27, 2024, at 6:00 PM
2008 Loggerhead Court, North Topsail Beach, NC 28460
(910) 328-1349 | www.northtopsailbeachnc.gov

Present: Hanna McCloud - Chair, Paul Dorazio - Vice Chair, Scott Morse, Kip Malcolm, Lisa Lee Kozlowski - Alternate.

Absent: Susan Meyer.

Staff Present: Deb Hill - MPA AICP CFM AZO - Planning Director; Town Attorney Brian Edes; Ricky Schwisow – IT Director; Building Codes Administrator Ralph Allen, Kate Winzler - CMC, NCCMC - Clerk to the Zoning Board of Adjustment.

I. CALL TO ORDER

Chair McCloud called the meeting to order at 6:04 p.m.

II. OATH OF OFFICE

None.

III. ADOPTION OF AGENDA

Mr. Malcolm made a motion to accept the adopted agenda as amended removing item II. Ms. Kozlowski seconded the motion. The motion passed unanimously, 5-0.

IV. APPROVAL OF MINUTES

Ms. Kozlowski made a motion to accept the minutes from the February 29, 2024 meeting. Mr. Malcolm seconded the motion. The motion passed unanimously, 5-0.

V. NEW BUSINESS

A. Case A24-000001 Appeal by Matthew Davis/Coastland Construction LLC

Town Attorney Edes explained there was a Board Member who wished to recuse themselves.

Chair McCloud confirmed.

Attorney Edes asked Vice Chair Dorazio if he felt based upon the circumstances that he could not be fair and impartial.

Vice Chair Dorazio explained there was a conflict of interest since he was on the Village of Stump Sound ARC Board where the violation was enforced.

Ms. Kozlowski made a motion to recuse Mr. Dorazio. Mr. Morse seconded the motion. The motion passed unanimously, 4-0.

Attorney Edes explained that the recusal left only four sitting members of the Board. Unlike a variance, the matter was an appeal which required a majority as opposed to a four-fifths vote. He asked the applicants' attorney Mr. Stephen Coggins as to whether the appellant wished to proceed with only four members.

Attorney Stephen Coggins with Roundtree Losee in Wilmington introduced himself and explained that he was specifically representing Phil and Kristen Buckley, the property owners to whom the citation for the penalty was issued. Mr. Coggins stated that they could not stipulate to only four members for purposes of the merits. He asked the Board to consider mediation. Mr. Coggins explained that mediation would require the Buckleys and the Town to agree to mediation, require each to designate someone with authority to represent them in the mediation, and mutually agree to a mediator. Mr. Coggins stated that they would stipulate to the four Board members making a decision regarding going into the voluntary mediation process.

Attorney Edes asked Attorney Coggins if he had any objections if the Board of Adjustment was inclined to move forward with mediation, designating two Board members to be present at the mediation as decision makers, and if the mediation was not fruitful, then return and hear the appeal.

Attorney Coggins replied, "No objections."

Chair McCloud asked Mr. Edes if the two people appointed to the mediation would be from the Board or from staff.

Attorney Edes stated that there was no mediation guidance from the General Assembly. However, the Board of Adjustment was the appropriate party to hear and rule on an appeal, so the voice of the Board of Adjustment should be present at the mediation. Staff could be present to facilitate the mediation, and to present an argument to the mediator. The statute requires the staff member whose decision is being appealed from to be at the appeal hearing, so Attorney Edes suggests that person equally should be at any mediation.

Chair McCloud asked if Attorney Edes would represent the Town in the mediation.

Attorney Edes replied mostly likely. He asked if the Board was inclined to continue until a time when five members could be present, while also pursuing mediation, pursuant to North Carolina General Statute 160D-405(g) and North Topsail Beach Code of Ordinances section 2.03.05(g).

Attorney Coggins suggested his clients' desire to move forward and suggested a continuance of this hearing until the next regularly scheduled meeting while accomplishing mediation in the interim.

Ms. Kozlowski made a motion to have a continuance to and have mediation in between, continue it to April.

Attorney Edes recommended having one motion at a time.

Ms. Kozlowski revised the motion to continue to the next regularly scheduled meeting in April. Mr. Malcolm seconded the motion. The motion passed unanimously, 4-0.

Attorney Edes asked if the Board was inclined to pursue mediation in the interim.

Ms. Kozlowski made a motion to pursue mediation in the interim. Mr. Morse seconded the motion. The motion passed unanimously, 4-0.

Attorney Edes asked if the Board was inclined to designate no more than two members of the Board of Adjustment to attend the mediation.

Mr. Malcolm explained that he would not be available at the end of April.

Chair McCloud volunteered.

Mr. Morse explained that April was a busy month for him.

There was discussion.

Attorney Edes recommended appointing people from the Board who were present at the meeting.

Mr. Morse made a motion to appoint Lisa (Kozlowski) and Hanna (McCloud) to the mediation. Mr. Malcolm seconded the motion. The motion passed unanimously, 4-0.

Attorney Edes explained that the scope of an appeal was for the Board of Adjustment to ascertain whether the staff member whose decision was being appealed from properly interpreted and applied the ordinance. The Board's options were to affirm, reverse, or modify that order. Attorney Edes defined the scope of the citations for the matter on citation 23-001117 as pertaining to Town Ordinance 10.02.02 and 10.07.02. He asked for Mr. Coggins to confirm.

Attorney Coggins replied that the Town citation by that case number cited section 10.07.02(A).

Attorney Edes asked Mr. Coggins to acknowledge the two statutes listed in the bottom right corner of the citation.

Attorney Coggins acknowledged section 10.02.02.

Attorney Edes asked if the appeal submitted stated those sections were what the appellants were appealing from.

Attorney Coggins confirmed and stated that was the subject of the mediation. He advised that his clients stipulate to the rules regarding court ordered mandatory mediations in superior court, perhaps with the exception that the mediator need not necessarily be a certified mediator.

Attorney Edes replied that he didn't think anyone wanted it to be an exercise in futility.

Chair McCloud asked who would make the mediation arrangements.

Planning Director Hill replied that she would work with the Town Attorney to arrange the mediation.

Attorney Edes explained that both the Town side and the appellants' side would need to agree on the mediator.

Attorney Coggins stated they could stipulate a broad approval, and not necessarily require someone certified.

Chair McCloud continued the case to the next scheduled meeting with mediation to proceed in between.

Attorney Edes asked for the consent of the appellant.

Attorney Coggins confirmed and asked for the date of the next scheduled meeting.

Planning Director Hill replied it was dependent on the Town Attorney's availability.

Attorney Edes replied it was generally the last week of the month, and that it was not set yet. He offered to work with Attorney Coggins, his clients', and their witnesses' availability to schedule it.

Attorney Coggins asked if it was an appropriate time to ask about submitting a new permit application to the Town and CAMA regarding a new location for the stairways.

Attorney Edes replied that it was probably outside of the scope of the meeting. He offered that Ms. Hill could speak with them after the meeting.

Attorney Coggins offered that he wanted to make all the fully-developed facts available to the Town for the purposes of appropriate assessment of the penalty.

Attorney Edes answered that presumably by the time of mediation, discussions with staff will have taken place. He pointed out that they were in a gray area where the evidentiary hearing had not been opened. Ultimately, if the mediation was not fruitful, the Board would have to base their vote on the actual evidence presented.

VI. ADJOURNMENT

Mr. Malcolm made a motion to adjourn the special meeting. Ms. Kozlowski seconded the motion. The motion passed unanimously, 4-0.

The Zoning Board of Adjustment meeting adjourned at 6:22 p.m.

APPROVED

This ____ day of _____ 2024

Chair

CERTIFIED

This ____ day of _____ 2024

Clerk to the Zoning Board of Adjustment