

Tacks in the Road

By Mayor John Brodman

My two-cents worth

Another summer has come and gone in Pine Knoll Shores. Labor Day is in the books, schools have opened on a modified schedule, and the number of visitors to our island is tapering off with the change of seasons. Nevertheless, there is no doubt that our little piece of privacy and paradise has now been discovered. After a slow start in early spring due to the COVID-19 restrictions, we saw the number of visitors literally explode from Memorial Day forward. Occupancy tax collections in Carteret County during June 2020 were up by 17% from June 2019, and preliminary figures for July 2020 show an increase of 41% from the previous year. The figures for August won't be available for another month, but anecdotal evidence indicates another unprecedented rise is likely. Greg (Rudi) Rudolph, Carteret County's Shore Protection Manager, believes that virus-related travel restrictions and fears about traveling in general are funneling more visitors in our direction who would normally vacation abroad or in other states. Also, he believes that the ability of the public to work remotely has allowed more visitors and our second homeowners "the freedom to spend more time at destination locations like the beaches of Carteret County."

While increased visitation is great news for our area businesses, it does come at a cost in terms of increased traffic, overcrowding at some locations and barren shelves in our grocery stores. Also, the number of confirmed COVID cases in Carteret County had jumped from 400 on August 12, when I wrote last month's column, to 636 as of September 14. Governor Cooper allowed the state to move to Phase 2.5 reopening guidelines in early September, but social distancing requirements, mask mandates and all other cautionary recommendations remained in effect. Mass gathering limits were increased from 10 to 25 persons indoors and from 25 to 50 persons outdoors, but there are no provisions that would force us to move away from our current restrictions. We are learning to cope, manage our affairs and go about our business as best as we can. We have learned to be flexible, but it can be difficult.

At its last meeting on September 9, the Board of Commissioners discussed Phase 2.5 and what procedural changes we should make for all town hall activity. They decided to stick with our current plan, with a slight modification to allow a few additional members of the town staff to attend board meetings in person. Town hall and the public safety building will remain closed to the public, and all business is still being conducted remotely to the greatest extent possible. Meetings of the town's advisory committees are allowed with no more than 10 persons in attendance, and meetings of all other groups not affiliated with town business, like homeowners associations and clubs of one kind or another, are not permitted to meet at town hall. Citizens are still invited to send public comments to Town Clerk Charlie Rocci (clerk@townofpks.com) for inclusion into the record during the public comment period of the commissioners meetings.

One issue that comes up frequently that I would like to discuss is the dilemma we face as a town when it comes to the enforcement of our town's codes and ordinances. The issue covers all aspects of building construction, routine maintenance of our properties' land, trees and buildings, and all other rules applying to things like pet ownership, parking, golf carts, etc. On the one hand, we have to strive to be fair and equitable by applying the rules as evenly as possible in all situations. On the other hand, we also have to recognize that no two properties are alike; every circumstance is somewhat different; nuances exist; and one size, in terms of our rules, does not fit all. There are three steps involved in every action: first, there is the rule itself, then there is the interpretation of the rule, and finally there is the enforcement of the rule. The heart of the rule itself is the intent or purpose of the rule—what you are trying to accomplish. The interpretation of the rule addresses the application of the rule in a certain set of circumstances. Interpretation of the rule is

governed largely by precedent, or how the rule has traditionally been applied in similar circumstances in the past. The enforcement of the rule depends upon precedent as well, but it also addresses the relationship between the costs to the town (harmful effects) associated with noncompliance with the rule and the benefits accruing to the town as a result of adherence to the rule. Where do you draw the line?

Each step in this process requires and depends upon the application of logic, common sense and discretion, which, as we all know, can vary from person to person and circumstance to circumstance. If we don't apply a certain amount of discretion in the formulation, application and enforcement of our codes, everything could come to a standstill. Our freedoms as individuals and as members of a collective community, let alone our position atop the food chain, depend largely upon wise use of our discretionary powers. We must strive to be fair and equitable, but sometimes there are extenuating circumstances. We encounter this dilemma every day. For example, there are residents who let their dogs run free off the leash in open spaces when no one is around, and others who, wittingly or unwittingly, unleash their dogs to run on a crowded beach. We want to enforce our leash law evenly, but we probably spend more resources policing the latter (beach) case, without consciously thinking about it, because of the visibility of the infraction and the greater potential for harm. In addition, we can't afford to use scarce police resources to patrol, for example, the woods behind town hall for dogs that may be off the leash.

Another recent example pertains to the clarification of the rule (Article 9 of Ch. 74-282) that allows HVAC equipment and generators (including their platforms and supports, which must remain uncovered) to encroach no more than 48 inches into any required setback. In this case, it appears there was confusion between the origin of the rule and possibly the intent of the rule. The issue came up when we found generators being placed in the setback when the footprints of buildings on two adjacent properties extended all the way to the setback line, leaving no room for generators or HVAC equipment except in the setback. Our codes at the time allowed exceptions for certain things to be placed in the setbacks, but generators and HVAC equipment were not on the list of exceptions. The rule was not enforced, however, and HVAC equipment and, more recently, generators were allowed to be placed in setbacks for decades, which established a long-standing precedent. Article 9 was approved to add generators and HVAC equipment to the list of acceptable exceptions and allow them to be legally placed in the setback.

Subsequently, however, some persons were under the impression that Article 9 would apply only in those cases where the building footprints on two adjacent properties extended all the way to the setback line, thereby leaving no room for HVAC/generator equipment except in the setback. Others believed that the rule was intended to apply to all properties, regardless of the placement of the building relative to the setback. Upon further discussion and examination, the commissioners decided (on a vote of 3-2) not to remand the issue back to the Planning Board for further consideration, meaning that Article 9 would still apply to all properties regardless of the placement of the building footprint relative to the setback.

This is a good example of the dilemmas your commissioners and town staff face every day. Our codes and ordinances are living documents that evolve over time, but not without friction and debate. In the HVAC example above, some people have the perception that Article 9 codified (legalized) non-compliance with our previous ordinance, while others believe that Article 9 simply codifies what was a long-standing precedent. These differences in judgements and perceptions are key to understanding our policy dilemmas.

I am intending to use a part of this column to briefly discuss an example of this policy dilemma every month. Next month, I plan to discuss the Pine Knoll Shores Code Sec. 46-2, related to obstructing streets and sidewalks. This is the regulation dealing with the rules that govern what property owners can and cannot do with the paved and unpaved portions of streets and rights-of-way in front of their property. It is a controversial and perennial issue, to say the least.

Stay safe and respect the virus.