



# PLANNING & ZONING COMMISSION MINUTES

**REGULAR MEETING**

**Wednesday, January 6, 2021 @ 6:30 pm**

The Kure Beach Planning and Zoning Commission (PZC) held its regular meeting on Wednesday, January 6, 2021. A quorum of members was present, and Attorney Jim Eldridge attended.

## **P&Z MEMBERS PRESENT**

Chairman Craig Galbraith  
Member David Garceau  
Member Kenneth Richardson  
Member Tony Garibay  
Member Kathleen Zielinski  
Alternate Member James Dugan

## **P&Z MEMBERS ABSENT**

None.

## **STAFF PRESENT**

Mandy Sanders, Town Clerk  
John Batson, Building Inspector

## **CALL TO ORDER**

Chairman Galbraith called the meeting to order at 7:52 p.m.

## **ADOPTION OF AGENDA**

MOTION- Member Richardson made a motion to adopt the agenda as presented.

SECOND- Member Garceau

VOTE- Unanimous

## **APPROVAL OF MEETING MINUTES:**

- December 2, 2020 Regular Meeting

MOTION- Member Richardson made a motion to approve the December 2, 2020 minutes as presented.

SECOND- Member Garibay

VOTE- Unanimous

## **PUBLIC COMMENTS**

None

## **OLD BUSINESS**

### **1. Prohibited Uses**

Attorney Eldridge reported he will research the idea of requiring a special use permit for everything not listed on table of uses and will bring it to February's PZC meeting.



# PLANNING & ZONING COMMISSION MINUTES

**REGULAR MEETING**

**Wednesday, January 6, 2021 @ 6:30 pm**

**2. Land Use Plan**

Chairman Galbraith reported no update for land use plan.

**NEW BUSINESS**

**1. Proposed text amendments to Chapter 15 Zoning**

- 15.08.100 Overlay Districts
- 15.08.110 K Avenue Mixed-Use Overlay District
- 15.08.120 Downtown Preservation and Historic Overlay District

Attorney Eldridge reported on the proposed text amendments to Chapter 15 Zoning. Proposed text amendments are hereby incorporated into the minutes.

**MOTION:** Chairman Galbraith made a motion to table discussion on proposed text amendments to Chapter 15 Zoning until the February Planning and Zoning Meeting.

**SECOND:** Member Garibay

**VOTE:** Unanimous

**ADJOURNMENT**


**MOTION:** Member Richardson made a motion to adjourn at 8.24 p.m.

**SECOND:** Member Garceau

**VOTE:** Unanimous

ATTEST:

  
Mandy Sanders, Town Clerk

  
Craig Galbraith, 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/Historical Preservation.

**PROPOSED TEXT AMENDMENTS DESIGNATING THE DOWNTOWN  
PRESERVATION AND HISTORIC DISTRICT**

*(For 01/06/2021 PZC Review)*

**15.08.100 K Avenue Mixed-Use Overlay District ~~Overlay Districts~~**

*Definition.* Overlay ~~zoning~~ districts ~~or zones~~ are established to define certain subareas within which development is subject to restrictions over and above those applicable to the underlying district. Within these overlay districts, any development that occurs must ~~be in~~ ~~compliance~~ ~~comply~~ not only with the regulations applicable to the underlying district but also with the additional requirements of the overlay district. ~~The "K Avenue mixed use overlay district" (referred to hereinafter as the "overlay district") is such a district. Overlay districts are not required to be mapped on the official zoning map if the description of such zones in the zoning ordinance is sufficient to define their extent and application to specific properties.~~

**15.08.110 K Avenue Mixed-Use Overlay District**

A. *Purpose and intent of the ~~overlay district~~ K Avenue Mixed-Use Overlay District ("MUOD").*

1. To provide for development consistent with the Town of Kure Beach Land Use Plan adopted in 2006;
2. To allow commercial activity along K Avenue to provide a link between the commercial district and a commercial area in the interior of the town that is zoned as neighborhood business and is in close proximity with key buildings such as the Town Hall and fire and police stations;
3. To allow a mixture of complementary land uses ~~that~~ ~~which~~ may include housing, retail, offices, commercial services and civic uses ~~and~~ to create economic and social vitality;
4. To provide for the development of commercial and mixed-use areas that are safe, comfortable, and attractive to pedestrians;
5. To reinforce streets as public places which encourage pedestrian and bicycle travel.

B. *Relationship with underlying district.* The ~~overlay district~~ MUOD is an overlay mixed use district zone. The land use regulations applicable to the underlying zone remain in full force and effect except where superseded herein. In circumstances where the underlying zone is silent, or where a provision hereof ~~is in conflict~~ ~~conflicts~~ with the underlying zone, the provision of the overlay ordinance shall be controlling.

C. *Geographic boundaries of district.* The ~~K Avenue mixed use overlay district~~ MUOD shall include and consist of lots the entire length of K Avenue between Third Avenue and Seventh Avenue. A condition of applying for a special use permit under the provisions of the overlay district is that any privately owned parking area intended to serve the subject project shall be

subject to the provisions of the permit (whether said parking is located in the ~~Overlay District~~MUOD proper or not).

D. *Uses allowed in the ~~overlay district~~MUOD (by special use permit only).*

1. Light retail (See retail, miscellaneous, KBC 15.02.010 for definition).
2. Light food service (primarily counter service); seating for no more than fifteen (15) customers.
3. Churches and other places of worship, including parish houses and Sunday schools.
4. Colleges, schools, public libraries, public museums, art galleries, and other public buildings.
5. Offices of resident members of recognized professions, such as doctors, dentists, engineers, lawyers, architects, where such professions are carried on within the premises.
6. Customary home occupations.

E. The following requirements and restrictions shall apply to the ~~overlay district~~MUOD.

1. *Residential component.* Each special use must contain a residential component in compliance with the NC Building Code and other applicable codes and regulations.
2. *Signs.* Signs in the mixed use area should be small, relatively unobtrusive and compatible with the neighborhood. Towards this end, the following shall apply to the ~~overlay district~~MUOD:
  - a. All regulations described in KBC 15.40.010 to KBC 15.40.120 apply to the overlay district.
  - b. In addition, the following regulations apply:
    - (1) Commercial signs may only be used in conjunction with an actual commercial activity occurring on the premises.
    - (2) A commercial sign may only be attached to the first floor of the building. Such attachment may either be flush or projecting.
    - (3) Only one (1) commercial sign is allowed for each building.
    - (4) Any lighting for the commercial sign must be external. No internally lit signs are allowed in this district. Lighting shall only be

allowed during the hours of operation for the business. Lighting for exterior signs must only illuminate the sign, and may not "spill over" to neighboring residences.

(5) The total area of the commercial sign shall not exceed six (6) square feet.

(6) It is encouraged that any commercial sign be attractive, and artistic, such as a carved wooden sign.

(7) As defined in KBC 15.40.050, no exposed neon conduit or tubing, interior or exterior neon window signs, interior or exterior LED signs, or lighting displays inside or outside the building so as to be visible from streets, parking areas or site boundaries are allowed. This includes tube lighting, string lighting, LED lighting, or typical holiday lighting. Exceptions to this are typical holiday lighting and decorations which contain no commercial message.

(8) Temporary "A" frame signs, or menu boards must be approved by the Town of Kure Beach Planning and Zoning Commission, to ensure that safety will be maintained, and that a reasonable time frame for use is established.

3. *Landscaping and hardscaping.* Landscaping or hardscaping of property between the street curb and buildings promotes and enhances a comfortable pedestrian scale and orientation. It encourages pedestrian use of the area.

The following design standards shall apply to development in the ~~overlay district~~ **MUOD**:

a. Landscaping.

(1) All usable open space, such as pedestrian walkways, separations between buildings, yard areas and common recreation areas should be landscaped and provided with an underground irrigation system, or an alternative equivalent system.

(2) Trees and plants indigenous to southeastern North Carolina are recommended.

b. Walls and fences.

(1) A four-foot high solid wall or fence should be constructed along the property line of any lot where construction of any residential/commercial mixed-use development is adjacent to property zone and /or used for residential purposes.

(2) Chain-link, barbed-wire, razor-wire and spikes are prohibited.

c. On-site tree preservation.

(1) All species of mature oak trees should be preserved and integrated into the project design unless it is shown to be infeasible. Mature trees are defined as trees having a diameter of thirty (30) inches or greater at a height of four and one-half (4.5) feet above adjacent ground.

(2) Removal of mature trees must be approved by the building inspector, to ensure that the circumstances present at the property warrant removal of the tree(s).

4. *Buffering.*

a. Shielding AC:

(1) In order to keep a harmonious look, HVAC units shall be in the back or side and concealed with landscaping or lattice, unless it can be shown that the same is not feasible. If the same is not feasible, additional screening may be required.

b. Shielding trash:

(1) Outside trash and garbage receptacles shall be no closer than five (5) feet from adjoining property lines.

(2) There shall be minimum visibility of outside trash and garbage receptacles from the street; all reasonable efforts in this regard shall be made, taking into account the following: (criteria for the type of screening to be used)

(A) The amount and size of receptacles shall be appropriate in light of the occupancy of the building.

(B) If enclosed, screening material should be consistent with the building.

(C) Recycling should be controlled such as minimize spillover.

(D) Dumpsters should be on a concrete pad so they can be washed and should be screened from neighboring properties.

5. *Lighting.*

a. A detailed lighting plan shall be submitted with preliminary drawings.

- b. Parking lot lights shall be shielded down, with the lights being not more than ten feet high.
- c. Commercial entrance lights shall be shielded down and directed at the entrance to the property.
- d. Flood and security lights shall be shielded and aimed such as to not create glare on adjoining properties.
- e. Accent lighting shall be low voltage and aimed at the objects to be accented only.
- f. All lighting shall be installed and aimed to minimize light trespassing across property lines.
- g. Restrictions:
  - (1) No lighting shall be aimed toward public streets causing public safety hazards.
  - (2) No laser lights are allowed.
  - (3) No search lights for advertising are allowed.
- h. Bare light sources (including, but not limited to, festive light strands, strands, incandescent, fluorescent, high intensity discharge, LED, fiber optics and neon) used to outline property lines, open sales areas, roof lines, doors, windows the edges of walls or any other area of the building or property visible from outside the building are prohibited, except for holiday lighting permitted from Thanksgiving through January 15th of the new year, unless approved as part of a planned lighting program. This section does not apply to a) security lighting with motion detection, b) emergency lighting and c) residential zones.

F. *Application.* An applicant for a use permitted in the ~~overlay district~~**MUOD** must apply for a special use permit from the Town ~~of Kure Beach~~ and follow the process described in KBC 15.08.080 and KBC 15.08.090. Staff will review the application to ensure that it is complete, as to the provisions above and the special use requirements. Although an application may be complete, i.e. all of the requirements set out in this section have been addressed, the ~~Planning and Zoning Commission or~~ **Planning and Zoning Commission** or Town Council may place additional requirements or conditions on the proposal through the special use process.

### **15.08.120 Downtown Preservation and Historic Overlay District**

*A. Purpose and Intent of the Downtown Preservation and Historic Overlay District (“HOD”).*

1. Protecting and preserving, within the designated HOD, important elements of the Town’s culture, history, and architecture.
2. Safeguarding the character and heritage of the HOD by preserving the district as a whole and the properties therein which embody those important elements of the Town’s culture, history, and architecture.
3. Promoting the use and conservation of the HOD for the education, pleasure, and enrichment of the residents of the HOD, the Town, and the State.
4. Stabilizing and enhancing property values within the HOD which will improve the general health, safety, and welfare of the Town’s residents.

*B. Establishment of the HOD.* The HOD district is hereby established as a historic district overlaying the existing B-1 Business District, the extent and boundaries of which are as indicated on the Town’s official zoning map.

*C. Effect of the HOD.* These HOD regulations apply in combination with the underlying B-1 district regulations and all other applicable provisions of the KBC. In circumstances where the B-1 district regulations are silent or where the HOD regulations conflict with the B-1 regulations, then the HOD regulations shall be controlling.

*D. Allowed Uses.* All uses permitted in the B-1 district, whether by right or as a Special Use, shall be permitted in the HOD district in accordance with the procedures established for such uses.

*E. Design Standards.* Buildings and structures within the HOD shall comply with the Design Standards for the Kure Beach Downtown Preservation and Historic District (“Design Standards”).

*F. Certificates of Appropriateness.*

1. A Certificate of Appropriateness (“COA”) shall be required for any erection, alteration, restoration, relocation, demolition, or destruction of any exterior portion of any building, structure (including masonry walls, fences, light fixtures, steps, pavement, or other appurtenant features), above-ground utility structure, or any type of outdoor advertising sign within the HOD.
2. Where required, a COA shall be granted by the Kure Beach Historic Preservation Commission (“HPC”) prior to the issuance of a building permit and a building permit that is issued thereafter shall be in conformity with said COA.



*G. Minor Work Excepted.*

1. Nothing in this section shall be construed to prevent minor work on any exterior feature in the HOD district. For the purposes of this section, “minor work” shall be interpreted and construed to mean ordinary maintenance, minor repairs, and other work which does not involve a substantial change in the design, material, or appearance of an exterior feature. Examples of such minor work are set forth in Sec. 3.2 of the Design Standards.

2. Minor work on exterior features within the HOD may be administratively approved by the Town’s Building Inspector without a COA hearing before the HPC. The request for administrative approval of minor work shall be made to the Building Inspector in writing, describe the work to be performed, and show that the work complies with these standards. A dated letter approving or denying the request shall be issued by the Building Inspector to the applicant generally within two (2) business days after the date on which the Building Inspector received the request.

3. Appeals of administrative decisions for minor work shall be made in writing to the HPC and delivered to the commission’s Clerk within ten calendar (10) days after the date of the Building Inspector’s letter setting forth the administrative decision. The appeal shall be considered and acted upon by the HPC in a special or regular meeting conducted no earlier than ten (10) calendar days after the date on which the Clerk received the appeal. The HPC’s decision on the appeal shall be made in writing and delivered to the appellant, via personal delivery, electronic mail, or certified mail, return receipt requested, within thirty (30) calendar days after the date of the hearing during which the appeal was taken.

*H. COA Applications.* Applications for a COA, and payment of any required fee, shall be made to the Building Inspector on forms available in the Building and Inspections Department. Each application shall include sketches, drawings, photographs, specifications, descriptions, and/or other material describing the proposed work and how it complies with the Design Standards. Insufficient applications shall not be processed.

*I. Staff Review and Report.* The Building Inspector shall review each COA application under the Design Standards and the Review Criteria set forth in subsection L herein. Based upon the review, the Building Inspector shall provide a report on the COA application to the HPC. The Building Inspector may determine, based upon review of the application, that the proposed work constitutes minor work and may approve the same in the manner set forth in subsection G above.

*J. Hearings and Notice.*

1. The HPC shall follow quasi-judicial procedures in determining applications for COAs.

2. A notice of hearing shall be mailed to: i) the person or entity whose application is the subject of the hearing; ii) to the owner of the property if the owner is not the applicant; and iii) to the owners of all parcels of land abutting the subject property (“abutting” as used herein to be interpreted and construed as including those parcels directly across the street from the subject property).

3. The notice of hearing shall be deposited in the mail at least 10 days but not more than 25 days before the date of the hearing and within that same time period, notice of the hearing shall be posted on the subject property or on an adjacent street or right-of-way.

4. The HPC Clerk shall provide written certifications of the mailed and posted notice. The certifications shall become a part of the hearing record and shall be deemed conclusive in the absence of fraud.

5. The HPC Clerk shall transmit to the HPC all applications, reports, and written materials which are relevant to the matter being considered. These materials may also be distributed to members of the HPC prior to the hearing provided that at the same time they are distributed to the applicant and to the property owner if that person or entity is not the applicant. These administrative materials shall become part of the hearing record and may be provided in written or electronic form.

6. Objections to the inclusion or exclusion of administrative materials may be made before and at the hearing and shall be ruled on at the hearing.

7. The applicant, the Town, and any person or entity who would have standing to appeal the decision shall have the right to participate as a party at the evidentiary hearing and other witnesses may present competent, material, and substantial evidence that is not repetitive and is allowed by the HPC.

8. Objections concerning jurisdictional and evidentiary issues, including the timeliness of an appeal or the standing of a party, may be made to the HPC. The HPC Chair shall rule on any objection and the Chair’s rulings may be appealed to the full HPC which will decide the issue by a majority vote.

#### *K. HPC Decision.*

1. Provided a complete application for a COA is filed by the appropriate deadline, the HPC shall consider the application at its next regular meeting following the deadline.

2. The HPC shall review each COA application under the Review Criteria set forth in subsection L herein and take action to approve, approve with modifications, or deny the application.

3. Prior to taking final action on an application, the HPC shall make written findings of fact based upon the Review Criteria and Design Standards and indicating the extent to which the application is, or is not, compatible with the HOD, the Review Criteria, and the Design Standards.
4. The HPC shall enter into the minutes of its meeting the findings of fact for the action taken.
5. The HPC shall make its decision within a reasonable time and preferably during the meeting in which the application was considered.
6. The HPC's decision shall be based on the competent, material, and substantial evidence in the record, reflect the commission's determination of contested facts and their application to the Review Criteria and the Design Standards, be approved by majority vote by the HPC, and signed by the Chair.
7. The decision shall be effective on the date it is filed with the Town Clerk and shall be delivered within a reasonable time, via personal delivery, electronic mail, or certified mail, return receipt requested, to the applicant, the property owner if different from the applicant, and to any person or entity that submitted, before the effective date of the decision, a written request for a copy thereof. The person providing notice of the decision shall certify in writing that proper notice has been provided and the certification shall become a part of the hearing record and be deemed conclusive in the absence of fraud.

*L. Review Criteria.*

1. The regulations set forth herein and the Design Standards are intended to, insofar as is reasonable, ensure that the exterior portions of the buildings and structures within the HOD shall be harmonious. However, it is not the intent of these regulations or the Design Standards to require the reconstruction or restoration of any buildings or structures, prohibit their demolition or removal, or impose any architectural style.
2. In determining COA applications, the HPC shall consider the historic and/or architectural significance of the building or structure under consideration, the exterior form and appearance of the proposed changes thereto, and the effect the proposed changes would have upon the other buildings and structures within the HOD.
3. The HPC shall make no requirement except to prevent work that is incongruent with the HOD.
4. COA Applicants shall consult the Design Standards which the Town will utilize in administering these regulations.

5. The HPC shall base its COA decisions concerning exterior form and appearance on the Design Standards and the following criteria:

- a. The height of the building or structure;
- b. The setbacks, lot coverage, yards, orientation, and positioning of the building or structure;
- c. Materials, surface textures, and patterns;
- d. Architectural details;
- e. Roof shapes, forms, features, and materials;
- f. Fenestration proportions, shapes, positions, locations, and patterns;
- g. The general form and proportions of the buildings and structures; and
- h. Appurtenant features including, without limitation, lighting, walls, and fences.

M. *Interior Arrangements Not Considered.* When determining COA applications, the HPC shall not consider the interior arrangement of the subject building(s) or structure(s).

N. *Relocation and Demolition.* Per N.C.G.S. § 160D-949, applications for a COA for the relocation, demolition, or destruction of a building or structure within the HOD shall not be denied. The effective date of such a COA, however, may be delayed for up to 365 days, if appropriate under the circumstances, in an effort to preserve the building or structure provided that the maximum period of delay shall be reduced by the HPC where the commission finds that the owner would suffer extreme hardship or be deprived of all beneficial use or return of the property as a result of the delay.

O. *Certain Changes Not Prohibited.* Nothing in these HOD regulations or the Design Standards shall be construed to prevent the ordinary maintenance or repair of any exterior feature in the HOD that does not involve a change in design, material, or appearance thereof nor to prevent the construction, reconstruction, alteration, restoration, relocation, or demolition of any such feature that the Building Inspector shall certify in writing is required for public safety because of an unsafe or dangerous condition. Nothing in these regulations or the Design Standards shall be construed to prevent a property owner from making any use of his property that is not prohibited by any other law.

P. *Successive Applications.* In the event the HPC denies a COA, a new application affecting the same property may be submitted if substantial changes are made in the original plans for the proposed work on the building or structure.

Q. *Appeals.* The applicant or the property owner if different from the applicant, may appeal the issuance or denial of a COA to the Kure Beach Board of Adjustment in the nature of certiorari within thirty (30) days after the date of their receipt of the written notice of decision. Any other person or entity who would have standing to appeal the decision, and who received notice of the decision in accordance with sub-sub-section 7 of sub-section K herein, shall have thirty (30) days from the date they received the notice within which to appeal to the Board of Adjustment.

R. *Lapse of Approval.* All COAs shall expire one (1) year from the date of issuance. The HPC may grant an extension of up to one (1) year provided the commission finds that substantial progress has been made under the COA or that the recipient encountered unforeseen difficulties which caused the delay.

S. *Compliance.*

1. Failure to comply with a COA shall constitute a violation of KBC Chapter 15 and shall be enforceable as provided for under KBC 15.42.010 *Civil Penalty*.
2. The discontinuance of work or the lack of substantial progress under a COA for a period of one (1) year shall be considered as a failure to comply with the COA and the enforcement of any remedy under Chapter 15 shall not prevent the application of any other remedy or remedies available under the Town's Code of other statutes, ordinances, or rules.