



PLANNING & ZONING COMMISSION MINUTES

REGULAR MEETING

Wednesday, February 3, 2021 @ 6:30 pm

The Kure Beach Planning and Zoning Commission (PZC) held its regular meeting on Wednesday, February 3, 2021. A quorum of members was present, and Attorney Jim Eldridge attended.

P&Z MEMBERS PRESENT

Chairman Craig Galbraith
Member Kenneth Richardson
Member Kathleen Zielinski
Alternate Member James Dugan

P&Z MEMBERS ABSENT

Member David Garceau
Member Tony Garibay

STAFF PRESENT

Mandy Sanders, Town Clerk
John Batson, Building Inspector

CALL TO ORDER

Chairman Galbraith called the meeting to order at 6:30 p.m.

MOTION: Chairman Galbraith made a motion to excuse Member Garceau and Member Garibay

SECOND: Member Zielinski

VOTE: unanimous

ADOPTION OF AGENDA

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

SECTION- Member Zielinski

VOTE- Unanimous

APPROVAL OF MEETING MINUTES:

- January 6, 2021 Regular Meeting

MOTION- Member Richardson made a motion to approve the January 6, 2021 minutes as presented.

SECTION- Member Zielinski

VOTE- Unanimous

PUBLIC COMMENTS

None

OLD BUSINESS

1. Prohibited Uses

Attorney Eldridge gave brief background on prohibited uses section of Chapter 15 of the code. Document is hereby incorporated into the minutes.



PLANNING & ZONING COMMISSION MINUTES

REGULAR MEETING

Wednesday, February 3, 2021 @ 6:30 pm

MOTION: Chairman Galbraith made a motion to forward the changes to the Prohibited Uses section of Chapter 15 to Town Council, as identified by Attorney Eldridge and recommend adoption.

SECOND: Member Richardson

VOTE: Unanimous

Attorney Eldridge stated the proposed Consistency Statement and recommended adoption.

MOTION: Member Richardson made a motion to adopt the Consistency Statement as stated by Attorney Eldridge

SECOND: Chairman Galbraith

VOTE: Unanimous

2. Land Use Plan

Town Clerk Sanders stated we have signed an agreement with the Cape Fear Council of Governments to do the Land Use Plan. The next Land Use Plan Committee meeting has been rescheduled from February 9, 2021 to March 1, 2021 at 10 a.m. in order to conduct the kick-off meeting with the Cape Fear Council of Governments.

3. Member Richardson stated he spoke with Duke about the underground utilities and they would like to schedule a meeting for March.

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: Member Richardson made a motion to forward proposed text amendments to Town Council and recommend scheduling a Public Hearing and approval at the next Town Council Meeting .

SECOND: Member Zielinski

VOTE: Unanimous

Attorney Eldridge stated the proposed Consistency Statement and recommended adoption.

MOTION: Chairman Galbraith made a motion to adopt the Consistency Statement as proposed by attorney Eldridge.

SECOND: Member Richardson

VOTE: Unanimous



PLANNING & ZONING COMMISSION MINUTES

REGULAR MEETING

Wednesday, February 3, 2021 @ 6:30 pm

Attorney Eldridge discussed possible reconstitution of HPC.

- There are detailed membership requirements for the HPC set forth in the statute.
- When you establish a public body, the recommendation is to adopt a charter that sets forth all the questions and answers for membership of that public body.
- Because current HPC was created without a charter, special attention needs to be paid to the reconstitution of HPC.
- Attorney Eldridge will research if there are any issues with Town Council appointing one of its own to a decision-making board.

Chairman Galbraith commented that he would like the reconstituted HPC to include some current members of HPC. Council can designate itself as HPC

MEMBER ITEMS

Building Inspector Batson asked the PZC members what their intent of Ordinance 15.16.040 was when it was put into place three years ago. Was the intent for required parking to only be in the front, or could it be on the side underneath the house?

Chairman Galbraith stated he believes the intent was to stop people from parking in the side grassy portion of the property.

Chairman Galbraith requested putting discussion of ordinance 15.16.040 on agenda for next meeting.

ADJOURNMENT

MOTION: Member Richardson made a motion to adjourn at 7:35p.m.

SECOND: Member Zielinski

VOTE: Unanimous

ATTEST: Mandy Sanders
Mandy Sanders, Town Clerk

Craig Galbraith
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 TO KBC 15.08.040
(For Council Consideration and Action)

Current Text:

15.08.040 District Regulations

Within the districts as indicated on the zoning map, no building or land shall be used and no building shall be erected or altered which is intended or designed to be used in whole or part for any use other than those listed as permitted for that district. A building or the use thereof may be considered changed when its form of occupancy or operation is substantially changed beyond those permitted uses as specified within the designated districts. A use not specifically addressed by the zoning ordinance shall be expressly prohibited so as not to alter or endanger the purpose of the zoning pertaining to each district and to ensure that the original intent and purpose as specified in G.S. § 160A-383 is maintained.

More than one (1) permitted use can be located on a particular site or within a particular building. All uses on a particular site or within a particular building must be permitted. If a use is not on the permitted use table, it is then prohibited. In addition, KBC 15.08.050 also identifies specific uses with a particular SIC code that may be prohibited. If a proposed use cannot be classified into a normal SIC code, the senior zoning administrator shall classify it with the use in the table most similar to it. If the senior zoning administrator should determine that a use is not listed and is not similar to a use in the permitted use table, then said use is prohibited. A business in operation may not add another use to their existing operation that is not permitted.

Proposed Amendments.

15.08.040 District Regulations (Redline) (blackline draft follows on page 2).

Within the districts as indicated on the zoning map, no building or land shall be used and no building shall be erected or altered which is intended or designed to be used in whole or part for any use other than those listed as permitted for that district. A building or the use thereof may be considered changed when its form of occupancy or operation is substantially changed beyond those permitted uses as specified within the designated districts. ~~A use not specifically addressed by the zoning ordinance shall be expressly prohibited so as not to alter or endanger the purpose of the zoning pertaining to each district and to ensure that the original intent and purpose as specified in G.S. § 160A-383 is maintained.~~ More than one (1) permitted use can may be located on a particular site or within a particular building.

~~More than one (1) permitted use can may be located on a particular site or within a particular building. All uses on a particular site or within a particular building must be permitted. If a use is not on the permitted use table, it is then prohibited. In addition, KBC 15.08.050 also identifies specific uses with a particular SIC code that may be prohibited. If a proposed use cannot be classified into a normal SIC code, the senior zoning administrator shall classify it with the use in the table most similar to it. Uses which are listed shall be liberally interpreted to include non-listed uses which have similar characteristics. A use that is not listed and that does not have characteristics similar to those of a listed use shall be interpreted as a use requiring a special use permit under the provisions of KBC 15.08.080 herein. If the senior zoning administrator should determine that a use is not listed and is not similar to a use in the permitted use table, then said use is prohibited. A business in operation may not add another use to their existing operation that is not permitted.~~

PROPOSED TEXT AMENDMENTS TO KBC 15.08.040
(For Council Consideration and Action)

15.08.040 District Regulations (Blackline).

Within the districts as indicated on the zoning map, no building or land shall be used and no building shall be erected or altered which is intended or designed to be used in whole or part for any use other than those listed as permitted for that district. A building or the use thereof may be considered changed when its form of occupancy or operation is substantially changed beyond those permitted uses as specified within the designated districts. More than one (1) permitted use may be located on a particular site or within a particular building.

Uses which are listed shall be liberally interpreted to include non-listed uses which have similar characteristics. A use that is not listed and that does not have characteristics similar to those of a listed use shall be interpreted as a use requiring a special use permit under the provisions of KBC 15.08.080 herein.



**TOWN OF KURE BEACH
PLANNING and ZONING COMMISSION**

PZC Meeting Date: 02/03/2021

PZC Agenda Item No. 5.1

**ZONING CONSISTENCY STATEMENT
N.C.G.S. 160D-604**

- X Consideration of proposed text amendments to The Town of Kure Beach Code (“KBC”) 15.08.040 *District Regulations*.
- X The proposed text amendments are CONSISTENT WITH the objectives/policies of the Town of Kure Beach Land Use Plan (“LUP”).
- X The proposed text amendments are CONSISTENT WITH the Land Use Compatibility goals set forth in Part 3, Section 2.B of the LUP.

_____ The proposed text amendments are NOT CONSISTENT WITH Part _____, Section _____ of the LUP.


The Planning and Zoning Commission (“Commission”) requests Town Council’s consideration and adoption of the proposed text amendments to KBC 15.08.040 which are attached hereto and incorporated herein by reference. The proposed amendments delete the current provisions expressly prohibiting uses not listed in the respective district regulations; a change mandated by the North Carolina Supreme Court’s invalidation of such provisions in the 2015 case of *Byrd v. Franklin Co.*, 368 N.C. 409, 778 S.E.2d 268. In place of the deleted provisions, the amendments provide that uses not listed in the district regulations and which do not have impacts similar to those of a listed use shall be interpreted as a use requiring a special use permit under KBC 15.08.080.

These amendments are consistent with the Land Use Compatibility goals set forth in Part 3, Section 2.B of the LUP which provide, in pertinent part, that the Town intends “to ensure that future development will be consistent with the historic small town nature of the community...and that any uses of land...minimize negative environmental impact and avoid risks to public health, safety and welfare...”

Based on these findings, the Commission recommends that Town Council adopt the proposed text amendments.

This the 3rd day of February 2021.

**TOWN OF KURE BEACH
PLANNING AND ZONING COMMISSION:**



Craig Galbraith, Chairman

**PROPOSED TEXT AMENDMENTS DESIGNATING THE DOWNTOWN
PRESERVATION AND HISTORIC DISTRICT**
(For 02/03/2021 PZC Review)

Note: Changes from the Council-PZC Joint Work Session are highlighted in yellow.

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. ~~H~~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~~ **districtMUOD**:

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 (“POD”).

1. Protecting and preserving, within the designated POD, important elements of the Town’s culture, history, and architecture.
2. Safeguarding the character and heritage of the POD 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 POD for the education, pleasure, and enrichment of the residents of the district, the Town, and the State.
4. Stabilizing and enhancing property values within the POD which will improve the general health, safety, and welfare of the Town’s residents.

B. *Establishment of the POD.* The POD 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 POD.* These POD 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 POD regulations conflict with the B-1 regulations, then the POD 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 POD district in accordance with the procedures established for such uses.

E. *Design Standards.* Buildings and structures within the POD 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 POD.
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 POD 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 POD 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 10 (10) 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 POD, 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 deliberate and render its decision in open session ~~within a reasonable time and preferably~~ during the meeting in which the application was considered heard.
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 POD 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 POD.
3. The HPC shall make no requirement except to prevent work that is incongruent with the POD.
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;~~

a. The setbacks, lot coverage, yards, orientation, and positioning of the building or structure;

b. Materials, surface textures, and patterns;

c. Architectural details;

d. Roof shapes, forms, features, and materials;

e. ~~Fenestration~~ The proportions, shapes, positions, locations, and patterns of doors and windows;

f. The general form and proportions of the buildings and structures; and

g. Appurtenant features including, without limitation, ~~lighting~~, walls and fences.

6. Nothing in the Review Criteria or in the Design Standards shall be interpreted or construed as preventing or restricting the authority to erect buildings to a height of 35 feet above ground level in accordance with N.C. Sess. Law 2006-126.

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 POD 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 POD regulations or the Design Standards shall be construed to prevent the ordinary maintenance or repair of any exterior feature in the POD 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.



TOWN OF KURE BEACH

PLANNING and ZONING COMMISSION

PZC Meeting Date: 02/03/2021

PZC Agenda Item No. 6.1

ZONING CONSISTENCY STATEMENT N.C.G.S. 160D-604

X Consideration of proposed text amendments to The Town of Kure Beach Code ("KBC"):

Chapter 15 *Zoning*:

1. 15.08.100 Overlay Districts.
2. 15.08.110 K Avenue Mixed-Use Overlay District.
3. 15.08.120 Downtown Preservation Overlay District.

X The proposed text amendments are **CONSISTENT WITH** the objectives/policies of the Town of Kure Beach Land Use Plan ("LUP").

X The proposed text amendments are **CONSISTENT WITH** the following provisions of the LUP: *see* Exhibit A attached hereto and incorporated herein by reference.

_____ The proposed text amendments are **NOT CONSISTENT WITH** Part _____, Section _____ of the LUP.

The Planning and Zoning Commission ("Commission") requests Town Council's consideration and adoption of the proposed text amendments referenced above which are attached hereto and incorporated herein by reference. The proposed amendments for a new KBC 15.08.120 establish the Kure Beach Downtown Preservation Overlay District and set forth the regulations under which it will be administered. The remaining text amendments to KBC 15.08.100 and -110 revise, considering the addition of the new preservation overlay district, the definition provided for Overlay Districts and the syntax of the regulations for the K Avenue Mixed-Use Overlay District. The Commission finds that Council's adoption of the proposed text amendments will be reasonable and in the public interest considering the consistency of the proposed amendments with the objectives and policies of the LUP set forth on Exhibit A hereto.

Based on these findings, the Commission recommends that Town Council adopt the proposed text amendments.

This the 3rd day of February 2021.

**TOWN OF KURE BEACH
PLANNING AND ZONING COMMISSION:**



Craig Galbraith, Chairman

EXHIBIT A

LUP, Part 2, Section 2. B's Goal Statement at p. 100: "Kure Beach desires to ensure that future development will be consistent with the historic small town nature of the community and that big box residential and high rise development will be avoided...The primary concern of local officials expressed during the process of Land Use Plan creation was that Kure Beach should preserve its small town character."

LUP, Part 1, Section 6. B. (2) at p. 69: "Kure Beach has managed to save much of its historic charm. Much of the municipality developed in a way which became the traditional type development for North Carolina beach communities. The Town of Kure Beach has done a far better job of holding onto its identity than many other beach municipalities. Kure Beach has both residential areas and a defined downtown area . . . Increasing development pressures for more dense and intense commercial and residential development (as seen in adjacent municipalities) to accommodate seasonal and permanent residents has been an issue in Kure Beach since the last land use plan update in 1997."

LUP, Part 2, Section 2. F. (79) at p. 120: "It is the policy of Kure Beach to maintain the "family" and "small town" feel of the community by encouraging and supporting festivals and events."

LUP, Part 2, Section 2. F. (83) b. at p. 121: The Town of Kure Beach wishes to keep the small town atmosphere which long-term residents have come to love."

LUP, Part 2, Section 3 (A) (2) at pp. 125-26: "The [B-1 District] is the traditional downtown area for Kure Beach [and]...is shown on the Future Land Use Map as the four blocks bounded by Third Avenue to the west, L Avenue to the north, and J Avenue to the south. K Avenue and the Kure Beach Pier are at the center of the [B-1 District]. The pier is the traditional centerpiece of the Town's commercial center, and the Town desires to keep it as a functioning public pier. The [B-1 District] is primarily built-out with a mix of structures built more recently and structures that are thirty to fifty years or more old...the [B-1 District] will continue to be the center of all Town resident and tourism associated business for Kure Beach....[The Town] wishes to conserve the commercial district and not allow residential uses to become the dominant use in the district."

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