



AGENDA

Town of Kure Beach Planning and Zoning Commission

Wednesday, May 5, 2021

A meeting of the Planning and Zoning Commission will be held Wednesday, May 5, 2021 in the Council Chambers commencing at **6:30 PM**.

Page

1. CALL TO ORDER

2. ADOPTION OF THE AGENDA

3. ADOPTION OF MINUTES

- 3 - 6 3.1. April 7, 2021 Regular Meeting
[2021-04-07 - PCZ](#)

4. PUBLIC COMMENT

5. OLD BUSINESS

- 5.1. Underground Utilities Update (Richardson)
- 5.2. Land Use Plan Update (Galbraith)
- 7 - 49 5.3. Chapter 160D Update and Review (Eldridge)
[160D Chapter 2 Proposed Text Amendments](#)
[160D Chapter 12 Proposed Text Amendments](#)
[160D Chapter 13 Proposed Text Amendments](#)

6. NEW BUSINESS

- 50 6.1. Oath of Office for Alternate Member Joe Barlok (Sanders)
[Joe Barlok 5.5.2021](#)

6.2. Discussion of the Kure Beach Bike Path (Galbraith)

7. ADJOURNMENT



PLANNING & ZONING COMMISSION MINUTES

REGULAR MEETING

Wednesday, April 7, 2021 @ 6:30 pm

The Kure Beach Planning and Zoning Commission (PZC) held its regular meeting on Wednesday, April 7, 2021 at 6:30 pm. A quorum of members was present, and Attorney Jim Eldridge attended.

P&Z MEMBERS PRESENT

Chairman Craig Galbraith
Member Kathleen Zielinski
Member Tony Garibay
Member James Dugan
Member Kenneth Richardson
Alternate Member Joseph Barlok

P&Z MEMBERS ABSENT

STAFF PRESENT

Mandy Sanders, Town Clerk
John Batson, Building Inspector

CALL TO ORDER

Chairman Galbraith called the meeting to order at 6:31 p.m.

ADOPTION OF AGENDA

MOTION: Chairman Galbraith made a motion to amend the agenda and switch item 5.3 Chapter 160D updated under Old Business with item 5.4 Continued discussion on proposed text amendments under Old Business

SECOND: Member Garibay

VOTE: Unanimous

MOTION- Member Zielinski made a motion to adopt the agenda as amended

SECOND- Member Dugan

VOTE- Unanimous

APPROVAL OF MEETING MINUTES:

- March 3, 2021 Regular Meeting

Member Zielinski recommended changing the wording on page 7 under LUP discussion, continued discussion from PZC meeting to continued discussion from HPC meeting.

MOTION- Member Zielinski made a motion to approve the March 3, 2021 minutes with recommended change.

SECOND- Member Dugan

VOTE- Unanimous



PLANNING & ZONING COMMISSION MINUTES

REGULAR MEETING

Wednesday, April 7, 2021 @ 6:30 pm

PUBLIC COMMENTS

Col Amy Russo commented she would like to discuss the Historic District.

Chairman Galbraith stated we will be discussing the District in a few minutes.

OLD BUSINESS

1. Underground Utilities Update

Member Richardson stated he will meet with Member Garibay and Alternate Member Barlok to discuss underground utilities in Kure Beach.

Member Garibay stated going underground would be more expensive, but less damage during storms and less maintenance for the Town.

2. Land Use Plan Update

Chairman Galbraith stated the survey is linked under the LUP committee page on the Town website and goes out on Town news several times a week.

Town Clerk Sanders commented if Citizens do not have access to a computer, they can contact Town Hall and make an appointment to come down and use a computer at Town Hall to complete the survey.

- ### 3. Continued discussion on proposed text amendments to the following sections of Chapter 15 Zoning of the Town of Kure Beach Code and on the zoning map amendment for the proposed Downtown Preservation Overlay District overlaying the existing B-1 Business District. (Eldridge) Page 1 of 84
- 15.08.100 Overlay District
 - 15.08.110 K Avenue Mixed-Use Overlay District
 - 5.08.120 Downtown Preservation Overlay District
 - 15.08.040 District Regulations

Chairman Galbraith gave a brief description of the historic district.

Col Amy Russo – 209 K Ave

- Requested dates of meetings to listen to the recordings on the website
- Town Clerk Sanders had sent her the meeting dates in an email
- The two meetings to listen to would be the February HPC meeting and the February Special Meeting held by Town Council
- Majority of questions are concerns with Certificates of Appropriateness
- The verbiage seems objective and ambiguous
- Is concerned because she has 9 units with 80% occupancy
- Tenants have expectations that when something is broken, she will fix it
- Doesn't want to have to wait to start work because waiting for the Town to approve



PLANNING & ZONING COMMISSION MINUTES

REGULAR MEETING

Wednesday, April 7, 2021 @ 6:30 pm

Chairman Galbraith stated the Commission has reviewed 50-60 documents from other cities including Downtown Wilmington. The Commission did not want to go into that detail and decided to keep the document short and simple.

Attorney Eldridge stated the proposed text amendments lay out a timeline and staff needs to be able to review applications so the deadline for submittal is 30 days before the regularly scheduled HPC meeting. A review of the COA application is a quasi-judicial hearing and the State has specific notice requirements to allow all participants to prepare. The only way to shorten the timeline is to schedule a special meeting which would speed up the process. Regarding the repairs, the Preservation District Zoning Regulations only apply if there is a change to the exterior features of the building. Only if a citizen is making major changes to the exterior does the COA hearing take place.

Col Russo stated it sounds good until she and the Building Inspector disagree. Her property has been there since the late 1920's. If she needed to replace a rotted board, she should not be subjected to approval process.

Attorney Eldridge stated the conflict between the Design Standards and the proposed text Amendments can always be corrected.

Chairman Galbraith stated the Design Standards and the Text Amendments to Chapter 15 should be consistent. The opinion of the HPC is that you should not have to go through the Building Inspector for any repairs that will not change the exterior features of the building.

Building Inspector Batson stated you will still need to get a building permit for certain repairs even if COA or Historic District approval is not necessary.

Col Russo asked when decision will be voted on.

Chairman Galbraith stated it is on the agenda for April 19th Town Council Meeting.

4. Chapter 160 D Update

Attorney Eldridge stated:

- 160D proposed text amendments is hereby incorporated into the minutes.
- Chapter 12 in the Code is currently a reserved chapter and will be used for consolidating the text amendments into one place
- On April 19, 2021, Town Council will schedule a Public Hearing which will be for all 4 chapters of 160D

MOTION- Chairman Galbraith made a motion to forward the recommendation to Town Council for adoption of the Chapter 11 text amendments

SECOND- Member Zielinski

VOTE- Unanimous



PLANNING & ZONING COMMISSION MINUTES

REGULAR MEETING

Wednesday, April 7, 2021 @ 6:30 pm

MOTION- Chairman Galbraith made a motion to forward the recommendation to Town Council for adoption of Chapter 14 proposed text amendments

SECOND- Member Zielinski

VOTE- Unanimous

NEW BUSINESS

Chairman Galbraith brought up discussion of changes needed to Section G of the Design Standards.

Attorney Eldridge stated he would like to tackle the policy first and then tweak the regulations.

Building Inspector Batson suggested striking out line 5 and write: Should the Building Inspector determine that the work is not minor, the property owner will need to go through the approval process for a COA.

Member Zielinski suggested adding paragraph maintenance and repairs that does not result in changes to the exterior of the building the district regulations would not apply.

Attorney Eldridge suggested taking out the second sentence of G-1. Ordinary maintenance and repairs and other work which does not alter the exterior of the building, is not subject to these regulations.

MOTION- Chairman Galbraith made a motion to make changes to the Design Standards under section G as discussed to eliminate second sentence under on G-1 and add additional paragraph that maintenance and repair that does not involve a change to the exterior features of the building are not covered under this regulation

SECOND- Member Zielinski

VOTE- Unanimous

ADJOURNMENT

MOTION- Member Zielinski made a motion to adjourn at 8:43 p.m.

SECOND- Member Garibay

VOTE- Unanimous

KBC CHAPTER 2 ADMINISTRATION
(Proposed Text Amendments per 160D)

I. Table of Contents

Current:

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Amended:

2 ADMINISTRATION

[2.02 IN GENERAL](#)

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[~~2.06 BOARDS, COMMISSIONS, COMMITTEES RESERVED~~](#)

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[2.14 POLICE AUXILIARY](#)

II. 2.06.020 Town Boards, Commissions, Committees

Current:

2.06.010 Planning And Commission

A. Composition; Terms Of Office

1. The planning and zoning commission shall consist of five (5) regular members who shall be citizens and residents of the town.
2. One (1) alternate may be appointed by the town council who shall be seated as a regular member, automatically, in the event a member of the commission resigns or becomes incapacitated and unable to serve.
(Code 1973, § 2-26; Ord. of 8-15-78, § 2-26; Ord. of 3-20-01; Ord. of 4-21-15)

B. Terms; Removal; Filling Of Vacancies

1. The members of the planning and zoning commission shall be appointed for terms of five (5) years.
2. The members of the commission may after a public hearing, be removed by the appointing authority for inefficiency, neglect of duty or malfeasance in office.
3. Vacancies occurring for reasons other than expiration of term shall be filled as they occur for the period of the unexpired term.

KBC CHAPTER 2 ADMINISTRATION
(Proposed Text Amendments per 160D)

4. Faithful attendance at the meetings of the commission is considered a prerequisite for the maintenance of membership on the commission and is defined as no more than three (3) excused absences in a rolling twelve (12) month period. The five (5) commission members shall have equal voting powers on all matters which come before the commission.
(Code 1973, § 2-26; Ord. of 8-15-78, § 2-26; Ord. of 2-18-19(2))
- C. *Extraterritorial Jurisdiction.* The planning and zoning commission may exercise extraterritorial jurisdiction in accordance with the provisions of the General Statutes of North Carolina. (Code 1973, § 2-27)
- D. *Organization; Meetings; Quorum*
1. The planning and zoning commission as soon as practicable after the annual appointment shall meet and organize by electing one (1) of its members chairman, and shall elect a vice-chairman and secretary who may be a member of such commission. The term of the chairman and other officers shall be one (1) year with eligibility for re-election.
 2. The commission shall meet at least once each month. Regular meetings shall be open to the public. The commission shall adopt rules for transaction of its business and shall keep a record of its members attendance and of its resolution discussions, findings and recommendations, which record shall be a public record.
 3. There shall be a quorum of three (3) members for the purpose of taking any official action required by this article.
 4.
(Code 1973, § 2-28) **State law reference(s)**—Public meetings, G.S. § 143-318.10.
- E. *Compensation.* All members of the planning and zoning commission shall serve without compensation. (Code 1973, § 2-29)
- F. *Expenditures.* The expenditures of the planning and zoning commission, exclusive of gifts, shall be within the amount appropriated for the purpose by the town council. No indebtedness for which the town shall be liable shall be contracted or incurred by such commission unless an appropriation is made by the town council for such purpose, as authorized by law, and then only to the extent of such appropriation. The commission shall have the right to accept gifts and donations for the exercise of its functions and for giving publicity to its work. It may expend the money received from such donations and gifts, as in its judgment may appear best, in the exercise of its proper functions. (Code 1973, § 2-30)
- G. *Employees.* The planning and zoning commission is authorized and empowered to employ such clerks and subordinates, including technical and expert advisor, and to incur such expenses as in its judgment may be necessary. The total amount of expenditures made by such commission shall not exceed in the aggregate, the amount set apart in the budget for such purpose. The town council shall include in the annual budget of the town an item in such amount as may be deemed necessary to defray the expenses and carry on the operation of the commission. The commission may request of the town council additional service for special survey work. The town council shall at his discretion assign members of the staff of any administrative department to the

KBC CHAPTER 2 ADMINISTRATION
(Proposed Text Amendments per 160D)

commission, or direct such department to make special studies requested by the commission.
(Code 1973, § 2-30)

H. *Powers And Duties Generally.* It shall be the duty of the planning and zoning commission:

1. To acquire and maintain in current form such basic information and materials as are necessary to an understanding of past trends, present conditions and forces at work to cause changes in these conditions;
2. To prepare and from time to time amend and revise a comprehensive and coordinated plan for the physical development of the area;
3. To establish principles and policies for guiding action in the development of the area;
4. To prepare and recommend to the town council ordinances promoting orderly development along the lines indicated in the comprehensive plan;
5. To determine whether specific proposed developments plan for the orderly growth and improvement of the area;
6. To keep the town council and the general public informed and advised as to these matters;
7. To perform any other duties which may lawfully be assigned to it.
(Code 1973, § 2-31)

I. *Basic And Special Studies*

1. As background for its comprehensive plan and any ordinances it may prepare, the planning and zoning commission may gather maps and aerial photographs of manmade and natural physical features of the area, statistics on past trends and present conditions with respect of population, property values, the economic base of the community, land use, and such other information as is important or likely to be important in determining the amount, direction and kind of development to be expected in the area and its various parts.
2. In addition, the commission may make, cause to be made, or obtain special studies on the location and adequacy of specific facilities, and condition, which may include, but are not limited to, studies of housing, commercial and industrial facilities, schools, parks, playgrounds, recreational facilities public and private utilities, and traffic, transportation and parking facilities.
3. All town officials shall, upon request, furnish to the commission such available records or information as it may require in its work. The commission or its agents may, in the performance of its official duties, enter upon lands and make examinations or surveys and maintain necessary monuments thereon.

(Code 1973, § 2-32)

J. *Comprehensive Plan*

KBC CHAPTER 2 ADMINISTRATION
(Proposed Text Amendments per 160D)

1. The comprehensive plan, with the accompanying maps, plats, charts and descriptive matter, shall show the planning and zoning commission's recommendation to the town council for the development of such territory, including, among other things, the general location, character and extent of streets, bridges, boulevards, parkways, grounds and open spaces; the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication power and other purposes; also, the removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension of any of the foregoing ways, buildings, grounds, open spaces, property, utilities or terminals.
2. The plan and any ordinances or other measures to effectuate it shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the town and environs which will, in accordance with present and future needs, best promote health, safety, morals and the general welfare, as well as efficiency and economy in the process of development; including among other things, adequate provisions for traffic, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the promotion of good civic design and arrangement, wise and efficient expenditure of public services and other public requirements.

(Code 1973, § 2-33) **Cross reference(s)**—Zoning, Ch. 19.

K. *Designated As Zoning Commission; Preparation And Submission Of Zoning Ordinance For Adoption*

1. The planning and zoning commission is hereby designated as the zoning commission for the town and its environs. It shall prepare and submit to the town council for its consideration and possible adoption a zoning ordinance for the control of the height, area, bulk, location and use of buildings and premises in the area, in accordance with the provisions of the G.S. § 160A-381 et seq. Such proposed zoning ordinance, when adopted by the town council, will supplant the zoning ordinance and amendments now in effect.
2. The commission may initiate, from time to time, proposals for amendment of the zoning ordinance, based upon its studies and comprehensive plan. In addition, it shall review and make recommendations to the town council concerning all proposed amendments to the zoning ordinance.

L. *Preparation And Submission Of Subdivision Ordinance.* The planning and zoning commission shall prepare and submit to the town council for its consideration and possible adoption reasonable rules and regulations governing streets and street locations, plats for new subdivisions, plats for resubdivision, size of lots, property lines, placing of houses on lots, width of streets and all other rules or regulations pertaining to subdivisions and in accordance with the provisions of G.S. § 160A-371 et seq. (Code 1973, § 2-35)

M. *Recommendations Relative To Public Facilities.* The planning and zoning commission shall review and report as recommendations to the town council upon the extent, location and design of all public structures and facilities, on the acquisition and disposal of public properties, on the establishment of building lines, mapped street lines and proposals to change existing street lines.

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(Proposed Text Amendments per 160D)

In the absence of a recommendation from the commission, the town council may, if it deems wise, after the expiration of thirty (30) days from the date on which the question has been submitted in writing to the planning and zoning commission for review and recommendation, take final action. (Code 1973, § 2-36)

- N. *Street Naming.* The planning and zoning commission may recommend to the town council names for streets not heretofore named, may approve or reject names proposed by owners of additions or developments, may recommend changes of names of streets where names are found to be duplicated and may recommend changing the designation of streets where misapplications are found to exist. (Code 1973, § 2-37) **Cross reference(s)**—Streets, sidewalks and other public places, Ch. 14.
- O. *Submission Of Recommendations, Etc.* All acts, findings, decisions and determinations of the planning and zoning commission shall be submitted in the form of recommendations to the town council and such recommendations, when approved by the town council, shall have the force and effect of ordinances. (Code 1973, § 2-38)

Amended:

~~A. *Composition; Terms Of Office*~~

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(Proposed Text Amendments per 160D)

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(Proposed Text Amendments per 160D)

- ~~4.— To prepare and recommend to the town council ordinances promoting orderly development along the lines indicated in the comprehensive plan;~~
- ~~5.— To determine whether specific proposed developments plan for the orderly growth and improvement of the area;~~
- ~~6.— To keep the town council and the general public informed and advised as to these matters;~~
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I.— Basic And Special Studies

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- ~~2.— In addition, the commission may make, cause to be made, or obtain special studies on the location and adequacy of specific facilities, and condition, which may include, but are not limited to, studies of housing, commercial and industrial facilities, schools, parks, playgrounds, recreational facilities public and private utilities, and traffic, transportation and parking facilities.~~
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- ~~2.— The plan and any ordinances or other measures to effectuate it shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the town and environs which will, in accordance with present and future~~

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(Proposed Text Amendments per 160D)

needs, best promote health, safety, morals and the general welfare, as well as efficiency and economy in the process of development; including among other things, adequate provisions for traffic, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the promotion of good civic design and arrangement, wise and efficient expenditure of public services and other public requirements.

~~(Code 1973, § 2-33) Cross reference(s) — Zoning, Ch. 19.~~

~~K. — *Designated As Zoning Commission; Preparation And Submission Of Zoning Ordinance For Adoption*~~

- ~~1. — The planning and zoning commission is hereby designated as the zoning commission for the town and its environs. It shall prepare and submit to the town council for its consideration and possible adoption a zoning ordinance for the control of the height, area, bulk, location and use of buildings and premises in the area, in accordance with the provisions of the G.S. § 160A-381 et seq. Such proposed zoning ordinance, when adopted by the town council, will supplant the zoning ordinance and amendments now in effect.~~
- ~~2. — The commission may initiate, from time to time, proposals for amendment of the zoning ordinance, based upon its studies and comprehensive plan. In addition, it shall review and make recommendations to the town council concerning all proposed amendments to the zoning ordinance.~~

~~L. — *Preparation And Submission Of Subdivision Ordinance.* The planning and zoning commission shall prepare and submit to the town council for its consideration and possible adoption reasonable rules and regulations governing streets and street locations, plats for new subdivisions, plats for resubdivision, size of lots, property lines, placing of houses on lots, width of streets and all other rules or regulations pertaining to subdivisions and in accordance with the provisions of G.S. § 160A-371 et seq. (Code 1973, § 2-35)~~

~~M. — *Recommendations Relative To Public Facilities.* The planning and zoning commission shall review and report as recommendations to the town council upon the extent, location and design of all public structures and facilities, on the acquisition and disposal of public properties, on the establishment of building lines, mapped street lines and proposals to change existing street lines. In the absence of a recommendation from the commission, the town council may, if it deems wise, after the expiration of thirty (30) days from the date on which the question has been submitted in writing to the planning and zoning commission for review and recommendation, take final action. (Code 1973, § 2-36)~~

~~N. — *Street Naming.* The planning and zoning commission may recommend to the town council names for streets not heretofore named, may approve or reject names proposed by owners of additions or developments, may recommend changes of names of streets where names are found to be duplicated and may recommend changing the designation of streets where misapplications are found to exist. (Code 1973, § 2-37) Cross reference(s) — Streets, sidewalks and other public places, Ch. 14.~~

~~O. — *Submission Of Recommendations, Etc.* All acts, findings, decisions and determinations of the planning and zoning commission shall be submitted in the form of recommendations to the town~~

KBC CHAPTER 2 ADMINISTRATION

(Proposed Text Amendments per 160D)

~~council and such recommendations, when approved by the town council, shall have the force and effect of ordinances. (Code 1973, § 2-38)~~

KBC CHAPTER 12 (NEW) PLANNING and DEVELOPMENT REGULATION
(Proposed Text Amendments per 160D)

12 PLANNING AND DEVELOPMENT REGULATION

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[12.02.100 Conflicts of Interest](#)

12.02.020 Application and Effect of Prior Laws

- A. The provisions of this Chapter shall apply to all Town development regulations.
- B. The provisions of this Chapter are supplemental to specific provisions included in other KBC Chapters regulating land use and development. To the extent there are conflicts between the provisions of this Chapter and the provisions of other KBC Chapters, the more specific provisions shall control.
- C. The enactment of this Chapter and of Chapter 160D of the General Statutes shall not require the readoption of any KBC Chapters or ordinances enacted before July 1, 2021 and which are restated or revised, in whole or in part, in the ordinance adopting this Chapter.

12.02.020 Definitions

The words and phrases defined in this Section shall have the following meanings when used in this Chapter unless otherwise specifically provided or otherwise clearly required by context.

Administrative decision. – Decisions made in the implementation, administration, or enforcement of development regulations involving the determination of facts and the application of objective standards set forth in the Town’s development regulations; sometimes referred to as ministerial decisions or administrative determinations.

Administrative hearing. – A proceeding to gather facts needed to make an administrative decision.

Comprehensive plan. – A comprehensive plan that has been officially adopted by the governing board pursuant to G.S. 160D-501.

Decision-making board. – A governing board, planning board, board of adjustment, historic district board, or other board assigned to make quasi-judicial decisions under this Chapter.

Determination. – A written, final, and binding order, requirement, or determination regarding an administrative decision.

KBC CHAPTER 12 (NEW) PLANNING and DEVELOPMENT REGULATION
(Proposed Text Amendments per 160D)

Developer. – A person, including a governmental agency or redevelopment authority, who undertakes any development and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development on that property.

Development. – Any of the following:

- A. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
- B. The excavation, grading, filling, clearing, or alteration of land.
- C. The subdivision of land as defined in G.S. 160D-802. D. The initiation or substantial change in the use of land or the intensity of use of land. This definition does not alter the scope of regulatory authority granted by this Chapter.

Development approval. – An administrative or quasi-judicial approval made pursuant to this Chapter that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning permits, site plan approvals, special use permits, variances, and certificates of appropriateness. The term also includes all other regulatory approvals required under the Town’s development regulations including plat approvals, permits issued, development agreements entered into, and building permits issued.

Development permit. – An administrative or quasi-judicial approval that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal, including any of the following:

- A. Zoning permits.
- B. Site plan approvals.
- C. Special use permits.
- D. Variances.
- E. Certificates of appropriateness.
- F. Plat approvals.
- G. Development agreements.
- H. Building permits.
- I. Subdivision of land.
- J. State agency permits for development.
- K. Driveway permits.
- L. Erosion and sedimentation control permits.
- M. Sign permit.

Development regulation. – A unified development ordinance, zoning regulation, subdivision regulation, erosion and sedimentation control regulation, floodplain or flood damage prevention regulation, mountain ridge protection regulation, stormwater control regulation, wireless telecommunication facility regulation, historic preservation or landmark regulation, housing code, State Building Code enforcement, or any other regulation adopted pursuant to this Chapter, or a local act or charter that regulates land use or development.

Dwelling. – Any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any appurtenances belonging thereto or usually enjoyed therewith. For the purposes of this Chapter, the term does not include any manufactured home, mobile home, or recreational vehicle if used solely for a seasonal vacation purpose.

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Evidentiary hearing. – A hearing to gather competent, material, and substantial evidence in order to make findings for a quasi-judicial decision required by a development regulation.

Landowner or owner. – The holder of the title in fee simple. Absent evidence to the contrary, a local government may rely on the county tax records to determine who is a landowner. The landowner may authorize a person holding a valid option, lease, or contract to purchase to act as his/her agent or representative for the purpose of making applications for development approvals.

Legislative decision. – The adoption, amendment, or repeal of a regulation pursuant to this Chapter or an applicable local act. The term also includes the decision to approve, amend, or rescind a development agreement consistent with the provisions of Chapter 160D, Article 10 of the General Statutes.

Legislative hearing. – A hearing to solicit public comment on a proposed legislative decision.

Manufactured home or mobile home. – A structure as defined in G.S. 143-145(7).

Person. – An individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, the State of North Carolina and its agencies and political subdivisions, or other legal entity.

Planning and development regulation jurisdiction. – The geographic area within which the Town may undertake planning and apply its development regulations.

Property. – All real property subject to land-use regulation by a local government. The term includes any improvements or structures customarily regarded as a part of real property.

Quasi-judicial decision. – A decision involving the finding of facts regarding a specific application of a development regulation and requiring the exercise of discretion when applying the standards of the regulation. The term includes, but is not limited to, decisions involving variances, special use permits, certificates of appropriateness, and appeals of administrative determinations. Decisions on the approval of subdivision plats and site plans are quasi-judicial in nature only if the regulation authorizes a decision-making board to approve or deny the application based not only upon whether the application complies with the specific requirements set forth in the regulation, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings to be made by the decision-making board.

Site plan. – A scaled drawing and supporting text showing the relationship between lot lines and the existing or proposed uses, buildings, or structures on the lot. The site plan may include site-specific details such as building areas, building height and floor area, setbacks from lot lines and street rights-of-way, intensities, densities, utility lines and locations, parking, access points, roads, and stormwater control facilities which are depicted to show compliance with all legally required development regulations applicable to the project and the site plan review. A site plan approval based solely upon application of objective standards is an administrative decision and a site plan approval based in whole or in part upon the application of standards involving judgment and discretion is a quasi-judicial decision.

Special use permit. – A permit issued to authorize development or land uses in a particular zoning district upon presentation of competent, material, and substantial evidence establishing compliance with one or more general standards requiring that judgment and discretion be exercised as well as compliance with specific standards. The term includes permits previously referred to as conditional use permits or special exceptions.

Subdivision. – The division of land for the purpose of sale or development as specified in KBC x.x.x. **G.S. 160D-802.**

Subdivision regulation. – A subdivision regulation as set forth in KBC Chapter 14.

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Zoning map amendment or rezoning. – An amendment to a zoning regulation for the purpose of changing the zoning district that is applied to a specified property or properties. The term also includes: i) the initial application of zoning when land is added to the territorial jurisdiction of a local government that has previously adopted zoning regulations and ii) the application of an overlay zoning district or a conditional zoning district. The term does not include: i) the initial adoption of a zoning map by a local government; ii) the repeal of a zoning map and readoption of a new zoning map for the entire planning and development regulation jurisdiction; or iii) updating the zoning map to incorporate amendments to the names of zoning districts made by zoning text amendments where there are no changes in the boundaries of the zoning district or land uses permitted in the district.

Zoning regulation. – A zoning regulation as set forth in KBC Chapter 15.

12.02.030 Construction

- A. “Written” or “in writing” shall be deemed to include electronic communication.
- B. Unless otherwise specified and in the absence of evidence to the contrary, delivery by first class mail shall be deemed received on the third business day following having deposited the time for mailing with the United States Postal Service. Delivery by electronic mail shall be deemed received on the date sent.

12.02.040 Computation of Time

- A. In computing any period of time prescribed or allowed under the KBC Chapters regulating land use and development, the day of the act, event or publication after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a legal holiday. When the prescribed or allowed period of time is less than seven (7) days, then intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.
- B. Unless otherwise provided, whenever a person has the right or is required to take some act within a prescribed period of time after the service of a notice or other paper upon him/her and the notice or paper is received by United States Postal Service mail, then three (3) days shall be added to the prescribed period of time.

11.020.050 Maps

- A. *Zoning map.* The Town’s zoning district boundaries shall be drawn on a map and maintained for public inspection in the office of the Town Clerk. The zoning map may be on paper or in a digital format that has been approved by Town Council.
- B. *Incorporation by reference.* The Town’s development regulations may reference or incorporate by reference flood insurance rate maps, watershed boundary maps, or other maps officially adopted or promulgated by State and federal agencies. For these maps a regulation text or zoning map may reference a specific officially adopted map or may incorporate by reference the most recent officially adopted version of such maps. When zoning district boundaries are based on these maps, the regulation may provide that the zoning district boundaries are automatically amended to remain consistent with changes in the officially promulgated State or federal maps,

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provided a copy of the currently effective version of any incorporated map shall be maintained for public inspection as provided in subsection (a) of this section.

11.02.060 Development Approvals Run with the Land

Unless otherwise provided by law, all rights, privileges, benefits, burdens, and obligations created by development approvals shall attach to and run with the land.

11.02.070 Permit Choice and Vested Rights

- A. *Permit Choice.* If a land development regulation is amended between the time a development permit application was submitted and a development permit decision is made, or if a land development regulation is amended after a development permit decision has been challenged and found to wrongfully denied or illegal, then the applicant may choose which version of the development regulation will apply to the application in accordance with the provisions of G.S. 143-755.
- B. *Vested Rights.* Amendments of land development regulations are not applicable or enforceable without the written consent of the owner with regard to any of the following:
1. Buildings or uses of buildings or land for which a development permit application has been submitted and subsequently issued.
 2. Subdivisions of land for which a development permit application authorizing the subdivision has been submitted and subsequently issued.
 3. A site-specific vesting plan pursuant to KBC 12.02.080.
 4. A multi-phased development pursuant to subsection E of this Section.
 5. A vested right established by the terms of a development agreement authorized in accordance with the provisions of Article 10 of Chapter 160D of the General Statutes.

The establishment of a vested right under any subdivision of this subsection does not preclude vesting under one or more other subdivisions of this subsection or vesting by application of common law principles. A vested right, once established as provided for in this section or by common law, precludes any action by a local government that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property allowed by the applicable land development regulation or regulations, except where a change in State or federal law mandating local government enforcement occurs after the development application is submitted that has a fundamental and retroactive effect on the development or use.

- C. *Duration of Vesting.* Upon issuance of a development approval, the statutory vesting is effective upon filing of the application and for so long as the permit remains valid pursuant to law. Unless otherwise specified by this article or other statute, local development permits expire 1 year after issuance unless work authorized by the permit has substantially commenced. A local land development regulation may provide for a longer permit expiration period.

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Except where a longer vesting period is provided by statute or land development regulation, the statutory vesting granted by this section, once established, expires for an uncompleted development project if development work is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months. The 24-month discontinuance period is automatically tolled during the pendency of any Board of Adjustment proceeding or civil action in a State or federal trial or appellate court regarding the validity of a development permit, the use of the property, or the existence of the statutory vesting period granted by this section. The 24-month discontinuance period is also tolled during the pendency of any litigation involving the development project or property that is the subject of the vesting.

- D. *Multiple Permits for Development Project.* Subject to subsection C of this section, where multiple local development permits are required to complete a development project, the development permit applicant may choose the version of each of the local land development regulations applicable to the project upon submittal of the application for the initial development permit. This provision is applicable only for those subsequent development permit applications filed within 18 months of the date following the approval of an initial permit. For purposes of the vesting protections of this subsection, an erosion and sedimentation control permit or a sign permit is not an initial development permit.
- E. *Multi-Phased Development.* A multi-phased development is vested for the entire development with the land development regulations then in place at the time a site plan approval is granted for the initial phase of the multi-phased development. A right which has been vested as provided for in this subsection remains vested for a period of 7 years from the time a site plan approval is granted for the initial phase of the multi-phased development. For the purposes of this subsection, “multi-phased development” shall mean a development containing of 25 acres or more that is both of the following: i) submitted for development approval to occur in more than one phase and ii) subject to a master development plan with committed elements showing the type and intensity of use of each phase.
- F. *Continuing Review.* Following issuance of a development permit, the Town may make subsequent inspections and reviews to ensure compliance with the applicable land development regulations in effect at the time of the original application.
- G. *Process to Claim Vested Right.* A person claiming a statutory or common law vested right may submit information to substantiate that claim to the Building Inspector who shall make an initial determination as to the existence of the vested right. The decision of the zoning administrator or officer may be appealed in accordance with KBC 12.x.x. On appeal, the existence of a vested right shall be reviewed *de novo*. In lieu of seeking such a determination or pursuing an appeal, a person claiming a vested right may bring an original civil action as provided by G.S. 160D-1403.1.
- H. *Definitions.* As used in this Section, the following definitions apply:

Development permit. – An administrative or quasi-judicial approval that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal, including any of the following:

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1. Zoning permits.
2. Site plan approvals.
3. Special use permits.
4. Variances.
5. Certificates of appropriateness.
6. Plat approvals.
7. Development agreements.
8. Building permits.
9. Subdivision of land.
10. State agency permits for development.
11. Driveway permits.
12. Erosion and sedimentation control permits.
13. Sign permit.

Land development regulation. – Any State statute, rule, or regulation, or local ordinance affecting the development or use of real property, including any of the following:

1. Unified development ordinance.
2. Zoning regulation, including zoning maps.
3. Subdivision regulation.
4. Erosion and sedimentation control regulation.
5. Floodplain or flood damage prevention regulation.
6. Mountain ridge protection regulation.
7. Stormwater control regulation.
8. Wireless telecommunication facility regulation.
9. Historic preservation or landmark regulation.
10. Housing code.

- I. *Miscellaneous Provisions.* The vested rights granted by this section run with the land except for the use of land for outdoor advertising governed by G.S. 136-131.1 and G.S. 136-131.2 in which case the rights granted by this section run with the owner of a permit issued by the North Carolina Department of Transportation. Nothing in this section precludes judicial determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this section, nothing in this section shall be construed to alter the existing common law.

12.02.080 Vested Rights and Site-Specific Vesting Plans

- A. *Site-Specific Vesting Plan.* -- A plan submitted to the Town in which the applicant requests vesting under this section and describes with reasonable certainty on the plan the type and intensity of use for a specific parcel or parcels of property. The plan may be in the form of, but not be limited to, any of the following plans or approvals: a planned unit development plan, a subdivision plat, a preliminary or general development plan, a special use permit, or any other land-use approval designation utilized by the Town. The plan shall include the approximate boundaries of the site; significant topographical and other natural features affecting development of the site; the approximate location on the site of the proposed buildings, structures, and other improvements; the approximate dimensions, including height, of the proposed buildings and other

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structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways. What constitutes a site-specific vesting plan triggering a vested right shall be determined pursuant to the applicable Town development regulation, and the document triggering the vesting shall be so identified at the time of its approval. A variance does not constitute a site-specific vesting plan, and approval of a site-specific vesting plan with the condition that a variance be obtained does not confer a vested right unless and until the necessary variance is obtained. If a sketch plan or other document fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property, it may not constitute a site-specific vesting plan.

- B. *Establishment of Vested Right.* – A vested right is established with respect to any property upon the valid approval, or conditional approval, of a site-specific vesting plan as provided in this section. Such a vested right confers upon the landowner the right to undertake and complete the development and use of the property under the terms and conditions of the site-specific vesting plan, including any amendments thereto.
- C. *Approval and Amendment of Plans.* – If a site-specific vesting plan is based on an approval required under a Town development regulation, the Town shall provide whatever notice and hearing is required for that underlying approval. A duration of the underlying approval that is less than two years does not affect the duration of the site-specific vesting plan established under this section. Where authorized under a development regulation, the Town may approve a site-specific vesting plan upon terms and conditions deemed reasonably necessary to protect public health, safety, and welfare. Any such conditional approval results in a vested right, although failure to abide by the terms and conditions of the approval shall result in a forfeiture of the vested rights. A site-specific vesting plan is deemed approved upon the effective date of the decision approving the plan. An approved site-specific vesting plan and its conditions may be amended with the approval of the owner and the Town as follows: any substantial modification must be reviewed and approved in the same manner as the original approval while minor modifications may be approved by staff, if such minor modifications are authorized and provided for under an applicable Town development regulation.
- D. *Continuing Review.* – Following approval or conditional approval of a site-specific vesting plan, the Town may make subsequent reviews and require subsequent approvals to ensure compliance with the terms and conditions of the original approval, provided that these reviews and approvals are not inconsistent with the original approval. The Town may, under **KBC 12.x.x (160D-403(f))**, revoke the original approval for failure to comply with the applicable terms and conditions of the original approval or the applicable Town development regulations.
- E. *Duration and Termination of Vested Right.* –
1. A vested right for a site-specific vesting plan remains vested for a period of 2 years. This vesting shall not be extended by any amendments or modifications to a site-specific vesting plan unless expressly authorized under an applicable Town development regulation.

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2. Notwithstanding the provisions of subdivision 1 of this subsection, a local government may provide for rights to be vested for a period exceeding 2 years but not exceeding 5 years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions or other considerations. These determinations are in the sound discretion of the Town and shall be made following the process specified for the approval of the particular form of the subject site-specific vesting plan.
3. A vested right of reasonable duration may be specified in a development agreement as provided for in Chapter 160D, Article 10 of the General Statutes.
4. Upon issuance of a building permit, the provisions of KBC 11.02.040 shall apply except that a permit does not expire and shall not be revoked because of the running of time while a vested right under this section is outstanding.
5. A vested right as provided in this section terminates at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.

F. *Subsequent Changes Prohibited; Exceptions.* –

1. A vested right, once established as provided for in this section, precludes any zoning action by the Town that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved site-specific vesting plan, except under one or more of the following conditions:
 - a. With the written consent of the affected landowner.
 - b. Upon findings, by ordinance after notice and an evidentiary hearing before Town Council, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site-specific vesting plan.
 - c. To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consulting fees incurred after approval by the Town together with interest as provided under G.S. 160D-106. Compensation shall not include any diminution in the value of the property which is caused by the action.
 - d. Upon findings, by ordinance after notice and an evidentiary hearing, that the landowner or the landowner's representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the Town of the site-specific vesting plan or the phased development plan.

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- e. Upon the enactment or promulgation of a State or federal law or regulation that precludes the development contemplated in the site-specific vesting plan or the phased development plan, in which case the Town may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the plan, by ordinance after notice and an evidentiary hearing before Town Council.
2. The establishment of a vested right under this section does not preclude the application of overlay zoning or other development regulations which impose additional requirements but which do not affect the allowable type or intensity of use, or ordinances or regulations which are general in nature and are applicable to all property subject to the Town's development regulations including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise, applicable new regulations become effective with respect to property subject to a site-specific vesting plan upon the expiration or termination of the vesting rights period provided for in this section.
3. Notwithstanding any provision of this section, the establishment of a vested right does not preclude, change, or impair the authority of the Town to adopt and enforce development regulations governing nonconforming situations or uses.

G. Miscellaneous Provisions. –

1. A vested right obtained under this section is not a personal right and attaches to and runs with the applicable property. After approval of a site-specific vesting plan, all successors to the original landowner are entitled to exercise the unexpired vested rights.
2. Nothing in this section precludes judicial determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this section, nothing in this section shall be construed to alter the existing common law.

12.02.100 Conflicts of Interest

- A. *Town Council.* – A Town Council member shall not vote on any legislative decision regarding a development regulation adopted under this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A Town Council member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.
- B. *Appointed Boards.* – Members of the Town's appointed boards shall not vote on any advisory or legislative decision under the Town's development regulations where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a

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text amendment is a person with whom the member has a close familial, business, or other associational relationship.

- C. *Administrative Staff.* – No member of the Town Staff shall make a final decision on an administrative decision required under the Town’s development regulations if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance. No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Chapter unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with the Town to provide staff support shall engage in any work that is inconsistent with his/her duties or with the interest of the Town.
- D. *Quasi-Judicial Decisions.* – A member of any Town board exercising quasi-judicial functions pursuant to this Chapter shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional due process rights to an impartial decision maker. Impermissible violations of due process include, without limitation, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed *ex parte* communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.
- E. *Resolution of Objection.* – If an objection is raised to a board member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself/herself, the remaining members of the board shall by majority vote rule on the objection.
- F. *Familial Relationship.* – For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

12.04 TOWN BOARDS AND COMMISSIONS

[12.04.010 Planning and Zoning Commission](#)

[12.04.020 Board of Adjustment](#)

[12.04.030 Historic Preservation Commission](#)

[12.04.040 Appointments to Boards and Commissions](#)

[12.04.050 Oaths of Office](#)

12.04.010 Planning and Zoning Commission

- A. *Composition; Terms of Office*
 - 1. The Planning and Zoning Commission shall consist of 5 regular members who shall be citizens and residents of the town.

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2. 1 alternate member shall be appointed by the Town Council, for the same term and in the same manner as regular members and shall be seated as a regular member to fill a vacancy on the commission.

B. Terms; Removal; Filling of Vacancies

1. The members of the Planning and Zoning Commission shall be appointed for 5-year terms.
2. Members of the commission may, after notice and a public hearing, be removed by Town Council for inefficiency, neglect of duty or malfeasance in office.
3. Vacancies occurring for reasons other than expiration of term shall be filled as they occur for the period of the unexpired term.
4. Faithful attendance at the Planning and Zoning Commission meetings shall be a prerequisite for membership on the commission. As used herein, "faithful attendance" shall be defined as no more than 3 excused absences in a rolling 12-month period.
5. The members of the Planning and Zoning Commission shall have equal voting powers on all matters which come before it.

C. Organization; Meetings; Quorum

1. The Planning and Zoning Commission shall conduct annual organizational meetings in January to elect a chairman and a vice-chairman, approve the annual report, and adopt a regular meeting calendar. The chairman and vice-chairman shall be elected for 1 year terms beginning on the date they are elected and running until successors are elected at the next organizational meeting. Previous and serving chairmen and vice-chairmen shall be eligible for re-election.
2. The commission shall meet at least once each month. The commission's meetings and actions shall adhere to and follow the Rules of Procedure for the Planning and Zoning Commission and the North Carolina Open Meetings law.
3. The Town Clerk or his/her designee shall serve as the commission's clerk.
4. There shall be a quorum of 3 members for the purpose of commission meetings and for taking any official action thereat.

- D. Expenditures.* - The expenditures of the Planning and Zoning Commission shall be within the amount appropriated for that purpose by the Town Council. No indebtedness for which the Town may be liable shall be contracted or incurred by the commission unless an appropriation is made by Town Council for such purpose and then only to the extent of such appropriation.

- E. Employees; Consultants.* -- The Planning and Zoning Commission is authorized and empowered to employ subordinates, including technical and expert advisors, and to incur expenses related thereto as in its judgment may be reasonably necessary provided that the total amount of any such expenditures shall not exceed in the aggregate, the amount allocated for commission expenditures as set forth in the Town's annual budget.

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F. *Powers and Duties Generally.* -- The Planning and Zoning Commission shall have the following powers and duties:

1. To prepare, review, maintain, monitor, and periodically update and recommend to Town Council a comprehensive plan, and such other plans as deemed appropriate, and to conduct ongoing related research, data collection, mapping, and analysis necessary to an understanding of past trends, present conditions and forces at work to cause changes in these conditions.
2. To facilitate and coordinate citizen engagement and participation in the planning process.
3. To develop and recommend policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner.
4. To advise the governing board concerning the implementation of plans, including, but not limited to, review and comment on all zoning text and map amendments as required by **KBC 12.x.x.**
5. To exercise any functions in the administration and enforcement of various means for carrying out plans that the governing board may direct.
6. To perform any other related duties that the governing board may direct.

G. *Basic and Special Studies*

1. As background for the comprehensive plan and any ordinances it may prepare and recommend, the Planning and Zoning Commission may gather maps and aerial photographs of manmade and natural physical features of the area, statistics on past trends and present conditions with respect of population, property values, the economic base of the community, land use, and such other information as is important or likely to be important in determining the amount, direction and kind of development to be expected in the area and its various parts.
2. In addition, the commission may make, cause to be made, or obtain special studies on the location and adequacy of specific facilities which may include, but are not limited to, studies of housing, commercial and industrial facilities, schools, parks, playgrounds, recreational facilities public and private utilities, and traffic, transportation and parking facilities.
3. Town officials and staff shall, upon request, furnish to the Planning and Zoning Commission such available records or information as it may require in its work. The commission or its agents may, in the performance of its official duties, enter upon lands and make examinations or surveys and maintain necessary monuments thereon.

H. *Comprehensive Plan*

1. The comprehensive plan, with the accompanying maps, plats, charts and descriptive matter, shall show the Planning and Zoning Commission's recommendation to Town Council for: the development of property; the general location, character and extent of

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streets, parkways, grounds and open spaces; the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication power and other purposes; and the removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension of streets, buildings, grounds, open spaces, properties, utilities and terminals.

2. The comprehensive plan and any ordinances or other measures to effectuate it shall be made with the general purpose of guiding and attaining a coordinated, consistent, and harmonious development of properties within the Town's development regulation jurisdiction which will, in accordance with present and future needs, best promote public health, safety, and welfare and provide efficiency and economy in the process of property development including adequate provisions for traffic, light and air, safety from fire, natural disasters, and other hazards, the distribution of population, good civic design and organization, and the wise and efficient provision and use of public services.
- I. *Amending Zoning Regulations.* -- The commission may initiate and recommend to Town Council proposals for amending the Town's zoning regulations. The commission shall also review and make recommendations to Town Council on all proposed amendments to the Town's zoning regulations.
 - J. *Subdivision Regulations.* -- In accordance with KBC 14.04.030, Town Council may submit proposed amendment to the Town's Subdivision Regulations to the Planning and Zoning Commission for review and recommendations.
 - K. *Recommendations Relative to Public Facilities.* -- The Planning and Zoning Commission shall review and make recommendations to Town Council on the extent, location and design of all public structures and facilities; the acquisition and disposal of public properties; and the establishment of building lines, street lines and proposals to change existing street lines. In the absence of a recommendation from the Planning and Zoning Commission, Town Council may, upon the expiration of 30 days after the date on which the Planning and Zoning Commission reviewed the proposal, take final action.

12.04.020 Board of Adjustment

A. *Composition; Terms of Office*

1. The Board of Adjustment shall consist of 5 regular members who shall be citizens and residents of the town and who shall not hold any other public office, either by appointment or election, including committee membership, under the Town government.
2. 2 alternate members shall be appointed by the Town Council, for the same term and in the same manner as regular members, to serve on the board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member.
3. Each alternate member serving on behalf of any regular member shall have all of the powers and duties of a regular member.

B. *Terms; Removal; Filling of Vacancies*

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1. The members of the Board of Adjustment shall be appointed for 3 year terms.
2. Members of the Board of Adjustment may, after notice and a public hearing, be removed by Town Council for inefficiency, neglect of duty or malfeasance in office.
3. Vacancies occurring for reasons other than expiration of term shall be filled as they occur for the period of the unexpired term.
4. Faithful attendance at Board of Adjustment meetings shall be a prerequisite for membership on the board. As used herein, "faithful attendance" shall be defined as no more than 3 excused absences in a rolling 12 month period.

C. Organization; Meetings; Quorum

1. The Board of Adjustment shall conduct annual organizational meetings in January to elect a chairman and a vice-chairman, approve the annual report, and adopt a regular meeting calendar. The chairman and vice-chairman shall be elected for 1 year terms beginning on the date they are elected and running until successors are elected at the next organizational meeting. Previous and serving chairmen and vice-chairmen shall be eligible for re-election.
2. The Board of Adjustment's meetings and actions shall adhere to and follow the Rules of Procedure for the Board of Adjustment, the North Carolina Open Meetings law, and all procedures and processes applicable to making quasi-judicial decisions.
3. The Town Clerk or his/her designee shall serve as the board's clerk.
4. There shall be a quorum of 3 members for the purpose of board meetings and for taking any official action thereat.

D. Powers and Duties

Except as provided by other applicable provisions, the Board of Adjustment shall hear and decide appeals of administrative decisions and applications for a variance based upon alleged hardships resulting from the strict application of the Town's subdivision and zoning regulations set forth in, respectively, KBC Chapters 14 and 15.

12.04.030 Historic Preservation Commission

A. Composition; Terms of Office

1. The Historic Preservation Commission shall consist of 7 regular members as follows: the 5 members of the Planning and Zoning Commission; 1 member who owns property in the Downtown Preservation Overlay District; and 1 at-large member who is a citizen and resident of the Town.
2. 2 alternate members shall be appointed by the Town Council, for the same term and in the same manner as regular members, to serve on the commission in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member.

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3. A majority of the Historic Preservation Commission members shall have a demonstrated special interest, experience, of education in history, architecture, archaeology, or related fields.
4. Each alternate member serving on behalf of any regular member shall have all of the powers and duties of a regular member.

B. Terms; Removal; Filling of Vacancies

1. The members of the Historic Preservation Commission shall be appointed for 3 year terms.
2. Members of the Historic Preservation Commission may, after notice and a public hearing, be removed by Town Council for inefficiency, neglect of duty or malfeasance in office.
3. Vacancies occurring for reasons other than expiration of term shall be filled as they occur for the period of the unexpired term.
4. Faithful attendance at commission meetings shall be a prerequisite for membership on the board. As used herein, "faithful attendance" shall be defined as no more than 3 excused absences in a rolling 12 month period.

C. Organization; Meetings; Quorum

1. The Historic Preservation Commission shall conduct annual organizational meetings in January to elect a chairman and a vice-chairman, approve the annual report, and adopt a regular meeting calendar. The chairman and vice-chairman shall be elected for 1 year terms beginning on the date they are elected and running until successors are elected at the next organizational meeting. Previous and serving chairmen and vice-chairmen shall be eligible for re-election.
2. The Historic Preservation Commission's meetings and actions shall adhere to and follow the Rules of Procedure for the Board of Adjustment, the North Carolina Open Meetings law, and all procedures and processes applicable to making quasi-judicial decisions.
3. The Town Clerk or his/her designee shall serve as the commission's clerk.
4. There shall be a quorum of 4 members for the purpose of commission meetings and for taking any official action thereat.

D. Powers and Duties

1. Undertake an inventory of properties of historical, archaeological prehistorical, architectural, and/or cultural significance.
2. Recommend to Town Council areas to be designated by ordinance as "Historic Districts" and individual structures, buildings, sites, areas, or objects to be designated by ordinance as "Historic Landmarks."

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3. Recommend to Town Council that designation of any area as a historic district or part thereof, or designation of any building, structure, site, area, or object as a landmark, be revoked or removed for cause.
4. Conduct educational programs on the significance of historic properties and districts within the Town.
5. Cooperate with State, federal, and local governments in pursuance of the purposes of this Section.
6. Prepare and recommend the official adoption of a preservation element as part of the Town's comprehensive plan.
7. Review and act upon proposals for any erection, alteration, relocation, demolition, or destruction of any exterior portion of any building, structure, above-ground utility structure, or any type of outdoor advertising sign within the Downton Preservation Overlay District as set forth in KBC 15.08.120.

12.04.040 Oaths of Office

All members appointed to the Planning and Zoning Commission, Board of Adjustment, or Historic Preservation Commission shall, before entering their duties, qualify for doing so by taking an oath of office.

12.06 ADMINISTRATION, ENFORCEMENT, AND APPEALS

[12.06.010 Application](#)

[12.06.020 Administrative Development Approvals and Determinations](#)

[12.06.030 Enforcement](#)

[12.06.040 Appeals of Administrative Decisions](#)

[12.06.050 Quasi-Judicial Procedure](#)

12.06.010 Application

The provisions of this Article shall apply to all development regulations adopted by the Town pursuant to this Chapter. The provisions of this Article are supplemental to specific provisions included in other KBC Chapters regulating land use and development. To the extent there is a conflict between the provisions of this Article and the provisions of other applicable KBC Chapters, the more specific provisions shall control.

12.06.020 Administrative Development Approvals and Determinations

- A. *Development Approvals.* – To the extent consistent with the scope of regulatory authority granted by this Chapter, no person shall commence or proceed with development without first securing any required development approval from the Town. A development approval shall be in writing and may contain a provision requiring the development to comply with all applicable State, federal, and local laws. The Town may issue development approvals in print or electronic form and any development approval that is issued exclusively in electronic form shall be protected from further editing once issued. Applications for development approvals may be made by the landowner, a lessee, a person holding an option or contract to purchase or lease land, or an

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authorized agent of the landowner. An easement holder may also apply for development approval for such development as is authorized by the easement.

- B. *Determinations and Notice of Determinations.* – A development regulation enacted under the authority of this Chapter may designate the Staff member or members charged with making determinations under the development regulation. The officer making the determination shall give written notice to the owner of the property subject to the determination and to the party who sought the determination, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class or certified mail. The notice shall be delivered to the last address listed for the owner of the subject property on the county tax abstract and to the address provided in the application or request for a determination if the party seeking the determination is different from the owner, applicant, or person who sought the determination. Verification of the posting shall be provided to the staff member responsible for the determination. Absent an ordinance provision to the contrary, posting of signs shall not be required.
- C. *Duration of Development Approval.* – Unless a different period is specified by other applicable provisions, including those of a development agreement, a development approval expires 1 year after the date of issuance if the work authorized by the development approval has not been substantially commenced. The Town’s development regulations may provide for development approvals of shorter duration for temporary land uses, special events, temporary signs, and similar development. The Town’s development regulations may also provide for development approvals of longer duration for specified types of development approvals. Nothing in this subsection limits any vested rights secured under KBC 12.02.070 and 12.02.080.
- D. *Changes.* – After a development approval has been issued, no deviations from the terms of the application or the development approval shall be made until written approval of proposed changes or deviations has been obtained. While the Town may define by ordinance minor modifications to development approvals that can be exempted or administratively approved, the Town shall follow the same development review and approval process required for issuance of the development approval in reviewing and approving major modifications of that approval.
- E. *Inspections.* – Town Staff may inspect work undertaken pursuant to a development approval to assure that the work is being done in accordance with applicable State and local laws and of the terms of the approval. In exercising this power, Staff are authorized, upon presentation of proper credentials, to enter any premises within the jurisdiction of the local government at all reasonable hours for the purposes of inspection or other enforcement action provided that, however, appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been obtained.
- F. *Revocation of Development Approvals.* – In addition to initiation of enforcement actions under KBC 12.06.030, development approvals may be revoked by the Town by notifying the holder in writing stating the reason for the revocation. The Town shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval. Development approvals shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable local development regulation or any State law delegated to Town for enforcement purposes in lieu of the State; or for false statements or misrepresentations made in securing the approval. Any development approval mistakenly issued in violation of an applicable State or local

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law may also be revoked. The revocation of a development approval by Staff may be appealed pursuant to KBC 12.06.040.

- G. *Certificate of Occupancy.* – Upon completion of work or activity undertaken pursuant to a development approval, Town Staff shall make final inspections and issue a certificate of compliance or occupancy if Staff finds that the completed work complies with all applicable State and local laws and with the terms of the approval. No building, structure, or use of land that is subject to a building permit required by KBC Chapter 11 shall be occupied or used until a certificate of occupancy or temporary certificate has been issued.

12.06.030 Enforcement

- A. *Notices of Violation.* – When Staff determines work or activity has been undertaken in violation of a development regulation, any State law delegated to the Town for enforcement purposes, or in violation of the terms of a development approval, a written notice of violation may be issued. The notice of violation shall be delivered to the holder of the development approval and to the owner of the subject property, if the owner is not the holder of the development approval, by personal delivery, electronic delivery, or first-class or certified mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation may be posted on the property. The person providing the notice of violation shall certify that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. Except as provided by KBC 11.10.030 or as otherwise provided by law, a notice of violation may be appealed to the Board of Adjustment pursuant to KBC 12.06.040.
- B. *Stop Work Orders.* – Whenever any work or activity subject to regulation pursuant to this Chapter or other applicable development regulation or any State law delegated to the Town for enforcement purposes is undertaken in substantial violation of any State or local law or in a manner that endangers life or property, Staff may order the specific part of the work or activity that is in violation or presents such a hazard to be immediately stopped. The order shall be in writing, directed to the person doing the work or activity, and shall state the specific work or activity to be stopped, the reasons therefor, and the conditions under which the work or activity may be resumed. A copy of the order shall be delivered to the holder of the development approval and to the owner of the property involved (if that person is not the holder of the development approval) by personal delivery, electronic delivery, or first-class or certified mail. The person or persons delivering the stop work order shall certify that the order was delivered and that certificate shall be deemed conclusive in the absence of fraud. Except as provided by G.S. 160D-1112 and G.S. 160D-1208, a stop work order may be appealed pursuant to G.S. 160D-405. No further work or activity shall take place in violation of a stop work order pending a ruling on the appeal. Violation of a stop work order shall constitute a Class 1 misdemeanor.
- C. *Remedies.* –
1. Subject to the provisions of the development regulation, any development regulation governed by this Chapter may be enforced by any remedy provided by G.S. 160A-175. **(add civil penalty?)** If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used or developed in violation of this Chapter or of any development regulation governed by this Chapter, the Town, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, use, or development; to restrain, correct or abate the

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violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises.

2. In case any building, structure, site, area, or object designated as a historic landmark or located within a historic district designated by the Town is about to be demolished whether as the result of deliberate neglect or otherwise, materially altered, remodeled, removed, or destroyed, except in compliance with the development regulation or other provisions of this Chapter, the Town, the Historic Preservation Commission, or other party aggrieved by such action, may institute any appropriate action or proceedings to prevent such unlawful demolition, destruction, material alteration, remodeling, or removal, to restrain, correct, or abate such violation, or to prevent any illegal act or conduct with respect to such building, structure, site, area, or object. Such remedies shall be in addition to any others authorized by this Chapter for violation of an ordinance.

12.06.040 Appeals of Administrative Decisions

- A. *Appeals.* – Except as provided in KBC 11.10.030.E (appeals of Building Inspector orders concerning condemned buildings and structures), KBC 15.08.120.G.4 (appeals of administrative decisions for minor work in the Downtown Preservation Overlay District), and KBC14.06.040 (appeals of decisions on preliminary and final subdivision plats), appeals of administrative decisions/determinations made by Staff under development regulations governed by this Chapter shall be made to the Board of Adjustment unless a different board is provided as set forth above or as otherwise authorized by statute or ordinance. The procedures and processes of appeals to Town Council under KBC 11.10.030.E and to the Historic Preservation Commission under KBC 15.08.120.G. shall comply with the procedures and processes applicable to the Board of Adjustment hearing appeals. Appeal of a decision made pursuant to an erosion and sedimentation control regulation, a stormwater control regulation, or a provision of the housing code shall not be made to the Board of Adjustment unless required by a local government ordinance or code provision. (to whom then?)
- B. *Standing.* – The Town or any person having standing under G.S. 160D-1402(c) may appeal an administrative decision/determination to the Board of Adjustment. An appeal is taken by filing a notice of appeal with the Town Clerk. The notice of appeal shall state the grounds for the appeal.
- C. *Time to Appeal.* – The owner or other party has 30 days after receiving of the written notice of the decision/determination within which to file an appeal. Any other person with standing to appeal has 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal. In the absence of evidence to the contrary, notice given by first-class mail pursuant to KBC 12.06.020.B is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.
- D. *Record of Decision.* – The official who made the decision/determination shall transmit to the Board of Adjustment’s Clerk all documents and exhibits constituting the record upon which the decision/determination appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
- E. *Stays.* – An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal to the Board of Adjustment and any subsequent appeal in accordance with G.S. 160D-1402 or during

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the pendency of any civil proceeding authorized by law or appeals therefrom, unless the official who made the decision certifies to the Board of Adjustment, after notice of appeal has been filed, that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulation. In such a case, enforcement proceedings are not stayed except by a restraining order granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within 15 days after the request is filed. Notwithstanding any other provision of this section, appeals of decisions/determinations granting a development approval or otherwise affirming that a proposed use of property is consistent with the development regulation does not stay the further review of an application for development approvals to use the property; in those situations, the appellant or the Town may request and the Board of Adjustment may grant a stay of a final decision of development approval applications, including building permits, which are affected by the issue being appealed.

- F. *Alternative Dispute Resolution.* – The parties to an appeal made under this Section may agree to mediation or other forms of alternative dispute resolution.

12.06.050 Quasi-Judicial Procedure

- A. *Process Required.* – Boards shall follow quasi-judicial procedures in determining appeals of administrative decisions, special use permits, certificates of appropriateness, variances, or any other quasi-judicial decision. As used in this Section, “boards” includes the Historic Preservation Commission when determining appeals of administrative decisions for approval of minor work in the Downtown Preservation Overlay District.
- B. *Notice of Hearing.* – Notice of quasi-judicial evidentiary hearings shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by any other development regulation. In the absence of evidence to the contrary, the Town may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days but not more than 25 days prior to the date of the hearing. Within that same time period, the Town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The board hearing the matter may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular meeting without further advertisement.
- C. *Administrative Materials.* – The clerk to the board hearing the matter shall transmit to the board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the board prior to the hearing if at the same time they are distributed to the board a copy is also provided to the appellant or applicant and to the property owner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board at the hearing.

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- D. *Presentation of Evidence.* – The applicant, the Town, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board. Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board hearing the matter. The board chair shall rule on any objections, and the chair's rulings may be appealed to the full board to be resolved by a majority vote. These rulings are also subject to judicial review pursuant to G.S. 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.
- E. *Appearance of New Issues.* – The official who made the decision/determination or the person currently occupying that position, if the decision maker is no longer employed by the Town, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in a notice of appeal. If any party or the Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing.
- F. *Oaths.* – The chair of the board, any member acting as chair, and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.
- G. *Subpoenas.* – The board making a quasi-judicial decision under this Chapter through the chair or, in the chair's absence, anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, the applicant, the Town, and any person with standing under G.S. 160D-1402(c) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled by subpoena. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be immediately appealed to the full board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.
- H. *Appeals in Nature of Certiorari.* – When hearing an appeal pursuant to G.S. 160D-947(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below, and the scope of review shall be as provided in G.S. 160D-1402(j).
- I. *Voting.* – The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under G.S. 160D-109(d) shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.
- J. *Decisions.* – The board shall determine contested facts and make its decision within a reasonable time. When hearing an appeal, the board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.

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Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing, reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the board and signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the development regulation specifies. The decision of the board shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the local government that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.

- K. *Judicial Review.* – Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to KBC 12.10.020. Appeals shall be filed within the times specified in KBC 12.10.050.

12.08 ADOPTING, AMENDING, AND REPEALING DEVELOPMENT REGULATIONS

[12.08.010 Procedure for Adopting, Amending, and Repealing Development Regulations](#)

[12.08.020 Notice of Hearing on Proposed Zoning Map Amendments](#)

[12.08.030 Citizen Comments](#)

[12.08.040 Planning and Zoning Commission Review, Comment, and Statement](#)

[12.08.050 Governing Board Action and Statement](#)

12.08.010 Procedure for Adopting, Amending, and Repealing Development Regulations

- A. *Hearing with Published Notice.* – Before adopting, amending, or repealing any development regulation or ordinance relating thereto, Town Council shall hold a legislative hearing. A notice of the hearing shall be given once a week for 2 successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.
- B. *Notice to Military Bases.* – If the adoption or modification would result in changes to the zoning map or would change or affect the permitted uses of land located 5 miles or less from the perimeter boundary of a military base, the Town shall provide written notice of the proposed changes by certified mail, return receipt requested, to the commander of the military base not less than 10 days nor more than 25 days before the date fixed for the hearing. If the commander of the military base provides comments or analysis regarding the compatibility of the proposed development regulation or amendment with military operations at the base, Town Council shall take the comments and analysis into consideration before making a final determination on adopting or modifying the development regulation.
- C. *Ordinance Required.* – A development regulation shall be adopted by ordinance.
- D. *Down-Zoning.* – No amendment to the Town's zoning regulations or zoning map that down-zones property shall be initiated nor is it enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by the Town. For purposes of this section, "down-zoning" means a zoning ordinance that affects an area of land in one of the following ways:

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1. By decreasing the development density of the land to be less dense than was allowed under its previous usage.
2. By reducing the permitted uses of the land that are specified in a zoning regulation or land development regulation to fewer uses than were allowed under its previous usage.

12.08.020 Notice of Hearing on Proposed Zoning Map Amendments

- A. *Mailed Notice.* – Zoning regulations and the boundaries of zoning districts are to be determined, established, and enforced, and from time to time amended, supplemented, or changed in accordance with the provisions of this Chapter. The owners of affected parcels of land and the owners of all parcels of land abutting that parcel of land shall be mailed a notice of the hearing on a proposed zoning map amendment by first-class mail at the last addresses listed for such owners on the county tax abstracts. For the purpose of this Section, properties are "abutting" even if separated by a street or other transportation corridor. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date fixed for the hearing.
- B. *Optional Notice for Large-Scale Zoning Map Amendments.* – The first-class mail notice required under subsection A of this Section is not required if the zoning map amendment proposes to change the zoning designation of more than 50 properties owned by at least 50 different property owners and the Town elects to use the expanded published notice provided for in this subsection. In this event, the Town may elect to make the mailed notice provided for in subsection A herein or, alternatively, may elect to publish notice of the hearing as required by KBC 12.08.010 provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement is effective only for property owners who reside in the area of general circulation of the newspaper that publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection A above.
- C. *Posted Notice.* – When a zoning map amendment is proposed, the Town shall prominently post a notice of the hearing on the site proposed for the amendment or on an adjacent public street or highway right-of-way. The notice shall be posted within the same time period specified for mailed notices of the hearing. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required but the local government shall post sufficient notices to provide reasonable notice to interested persons.

12.08.030 Citizen Comments

If any resident or property owner in the Town submits a written statement regarding a proposed amendment, modification, or repeal to a zoning regulation, including a text or map amendment that has been properly initiated as provided for in this Article, to the Town Clerk at least 2 business days prior to the Council's consideration of and action on such change, the Town Clerk shall deliver such written statement to Town Council. If the proposed change is the subject of a quasi-judicial proceeding such as, e.g., Town Council's hearing on a special use permit application, the Town Clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all members of Council shall not disqualify any council member from voting.

12.08.040 Planning and Zoning Commission Review, Comment, and Statement

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- A. *Zoning Amendments.* – Subsequent to initial adoption of a zoning regulation, all proposed amendments to the zoning regulations or zoning map shall be submitted to the Planning and Zoning Commission for review and comment. If no written report is received from the Planning and Zoning Commission within 30 days of referral of the amendment to the commission, Town Council may act on the proposed amendment without the Planning and Zoning Commission’s report. Town Council is not bound by the recommendations of the Planning and Zoning Commission.
- B. *Review of Other Ordinances and Actions.* – Any development regulation other than a zoning regulation that is proposed to be adopted pursuant to this Chapter may be referred by Town Council the Planning and Zoning Commission for review and comment. Any development regulation other than a zoning regulation may provide that future proposed amendments of that ordinance be submitted to the Planning and Zoning Commission for review and comment.
- C. *Plan Consistency.* – When conducting a review of proposed zoning regulation text or map amendments under this Section, the Planning and Zoning Commission shall advise and comment on whether the proposed action is consistent with the Town’s comprehensive plan and any other officially adopted plan applicable to the proposed action. The Planning and Zoning Commission shall provide a written recommendation to Town Council addressing plan consistency and other matters as deemed appropriate by the commission provided that a comment by the Planning and Zoning Commission that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by Town Council. If a zoning map amendment qualifies as a "large-scale rezoning" under KBC 12.08.020.B, the Planning and Zoning Commission’s statement describing plan consistency may address the overall rezoning and comment on how the analyses and policies in the comprehensive plan were considered in the recommendation made.

12.08.050 Governing Board Action and Statement

- A. *Plan Consistency.* – When adopting or rejecting any zoning text or map amendment, Town Council shall approve a brief statement describing whether its action is consistent or inconsistent with the Town’s comprehensive plan. The plan consistency statement is not subject to judicial review.
- B. *Plan Inconsistency.* --If a zoning map amendment is adopted and the action was deemed by Town Council to be inconsistent with the comprehensive plan, then the zoning amendment shall have the effect of also amending any future land-use map within the comprehensive plan, and no additional request or application for a plan amendment shall be required. A plan amendment and a zoning regulation amendment may be considered concurrently. If a zoning map amendment qualifies as a "large-scale rezoning" under KBC 12.08.020.B, Town Council’s statement describing plan consistency may address the overall rezoning and describe how the analyses and policies in the comprehensive plan were considered in the action taken.
- C. *Additional Reasonableness Statement for Rezoning.* – When adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by Town Council. This statement of reasonableness may consider, among other factors: i) the size, physical conditions, and other attributes of the area proposed to be rezoned; ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community; iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment;

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iv) why the action taken is in the public interest; and v) any changed conditions warranting the amendment. If a zoning map amendment qualifies as a "large-scale rezoning" under KBC 12.08.020.B, the Town Council statement on reasonableness may address the overall rezoning.

D. *Single Statement Permissible.* – The statement of reasonableness and the statement of plan consistency may be approved as a single statement.

12.10 JUDICIAL REVIEW

[12.10.010 Declaratory Judgments](#)

[12.10.020 Appeals in the Nature of Certiorai](#)

[12.10.030 Appeals of Decisions on Subdivision Plats](#)

[12.10.040 Civil Actions for Declaratory Relief, Injunctive Relief, and Other Remedies](#)

[12.10.050 Statutes of Limitations](#)

12.10.010 Declaratory Judgments

Legislative decisions by Town Council on development regulations and actions authorized by KBC x.x.x, x.x.x, and x.x.x (108c 108g 405c) may be brought in accordance with the provisions of Article 26 of Chapter 1 of the General Statutes.

12.10.020 Appeals in the Nature of Certiorai

Appeals of quasi-judicial decision in the nature of certiorari shall be taken in accordance with the provisions of G.S. 160D-1402.

12.10.030 Appeals of Decisions on Subdivision Plats

Appeals of decisions on subdivision plats shall be taken in accordance with the provisions of G.S. 160D-1403.

12.10.040 Civil Actions for Declaratory Relief, Injunctive Relief, and Other Remedies

A. *Civil Action.* – Except as otherwise provided in this section for claims involving questions of interpretation, and in lieu of any remedies available under KBC x.x.x G.S. 160D-405 or KBC x.x.x G.S. 160D-108(h), a person with standing, as defined in subsection B of this Section, may bring an original civil action, in State superior or federal court, seeking declaratory relief, injunctive relief, damages, or any other remedies provided by law or equity to challenge the enforceability, validity, or effect of a local land development regulation for any of the following claims:

1. The ordinance, either on its face or as applied, is unconstitutional.
2. The ordinance, either on its face or as applied, is *ultra vires*, preempted, or otherwise in excess of statutory authority.
3. The ordinance, either on its face or as applied, constitutes a taking of property.

If the decision being challenged is from an administrative official charged with enforcement of a local land development regulation, the party with standing must first bring any claim that the

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ordinance was erroneously interpreted to the Board of Adjustment pursuant to KBC x.x.x **G.S. 160D-405**. An adverse ruling from the Board of Adjustment may then be challenged in an action brought pursuant to this subsection with the court hearing the matter *de novo* together with any of the claims listed in this subsection.

- B. *Standing*. – Any of the following criteria provide standing to bring an action under this Section:
1. The person has an ownership, leasehold, or easement interest in, or possesses an option or contract to purchase the property that is the subject matter of a final and binding decision made by an administrative official charged with applying or enforcing a land development regulation.
 2. The person was a development permit applicant before the decision-making board whose decision is being challenged.
 3. The person was a development permit applicant who is aggrieved by a final and binding decision of an administrative official charged with applying or enforcing a land development regulation.
- C. *Time for Commencement of Action*. – Any action brought pursuant to this Section shall be commenced within 1 year after the date on which written notice of the final decision is delivered to the aggrieved party by personal delivery, electronic mail, or by first-class or certified mail.
- D. *Joinder*. – An original civil action authorized by this Section may, for convenience and economy, be joined with a petition for writ of certiorari and decided in the same proceedings. The Rules of Civil Procedure govern the parties for the claims raised in the original civil action. The record of proceedings in the appeal pursuant to G.S. 160D-1402 shall not be supplemented by discovery from the civil action unless supplementation is otherwise allowed under G.S. 160D-1402(i). The standard of review in the original civil action for the cause or causes of action pled as authorized by subsection A of this Section is *de novo*. The standard of review of the petition for writ of certiorari is the standard established in G.S. 160D-1402(j).
- E. *Action Not Rendered Moot by Loss of Property*. – Subject to the limitations in the State and federal constitutions and State and federal case law, an action filed under this section is not rendered moot, if during the pendency of the action, the aggrieved person loses the applicable property interest as a result of the local government action being challenged and exhaustion of an appeal described herein is required for purposes of preserving a claim for damages under this section.
- F. *Stays*. – An appeal under this section is stayed as provided in KBC x.x.x. **G.S. 160D-405**.
- G. *Definitions*. – The definitions set forth in KBC 11.02.070.H apply in this Section.

12.10.050 Statutes of Limitations

- A. *Zoning Map Adoption or Amendments*. – A cause of action as to the validity of any regulation adopting or amending a zoning map or a development agreement adopted under Chapter 160D, Article 10 accrues upon adoption of the ordinance and shall be brought within 60 days as provided in G.S. 1-54.1.

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- B. *Text Adoption or Amendment.* – Except as otherwise provided in subsection A of this Section, an action challenging the validity of a development regulation adopted under this Chapter or other applicable law shall be brought within 1 year of the accrual of such action. Such an action accrues when the party bringing such action first has standing to challenge the ordinance. A challenge to an ordinance on the basis of an alleged defect in the adoption process shall be brought within 3 years after the adoption of the ordinance.
- C. *Enforcement Defense.* – Nothing in this section bars a party in an action involving the enforcement of a development regulation or in an action under KBC 12.10.040 from raising as a claim or defense in the proceedings the enforceability or the invalidity of the ordinance. Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1 bars a party who files a timely appeal from an order, requirement, decision, or determination made by an administrative official contending that the party is in violation of a development regulation from raising in the judicial appeal the invalidity of the ordinance as a defense to the order, requirement, decision, or determination. A party in an enforcement action or appeal may not assert the invalidity of the ordinance on the basis of an alleged defect in the adoption process unless the defense is formally raised within 3 years of the adoption of the challenged ordinance.
- D. *Termination of Grandfathered Status.* – When a use constituting a violation of a Town zoning regulation exists prior to the adoption of the zoning regulation creating the violation, and that use is grandfathered and subsequently terminated for any reason, the Town shall bring an enforcement action within 10 years of the date of the termination of the grandfathered status, unless the violation poses an imminent hazard to health or public safety.
- E. *Quasi-Judicial Decisions.* – Unless specifically provided otherwise, a petition for review of a quasi-judicial decision shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with KBC x.x.x **G.S. 160D-406(j)**. When first-class mail is used to deliver notice, 3 days shall be added to the time to file the petition.
- F. *Others.* – Except as provided by this Section, the statutes of limitations are as provided in Subchapter II of Chapter 1 of the General Statutes.

CHAPTER 13 COMMUNITY DEVELOPMENT AND PUBLIC FACILITIES

(Proposed Text Amendments per 160D)

I. 13.20.010 Statutory Authorization, Findings Of Fact, Purpose And Objective

Current:

A. *Statutory Authorization.* The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and G.S. Article 8 of Chapter 160A, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare. Therefore, the town council of the Town of Kure Beach, North Carolina, does ordain as follows. (Ord. of 6-19-18(1))

B. *Findings Of Fact*

1. The flood prone areas within the jurisdiction of the Town of Kure Beach are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
2. These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.
(Ord. of 6-19-18(1))

C. *Statement Of Purpose.* It is the purpose of this article to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

1. Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
2. Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
3. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
4. Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
5. Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

(Ord. of 6-19-18(1))

D. *Objectives.* The objectives of this article are to:

1. Protect human life, safety, and health;
2. Minimize expenditure of public money for costly flood control projects;

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(Proposed Text Amendments per 160D)

3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. Minimize prolonged business losses and interruptions;
5. Minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;
6. Minimize damage to private and public property due to flooding;
7. Make flood insurance available to the community through the National Flood Insurance Program;
8. Maintain the natural and beneficial functions of floodplains;
9. Help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
10. Ensure that potential buyers are aware that property is in a special flood hazard area.

Amended:

A. *Statutory Authorization.* -- The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; ~~Parts 3, 5, and 8 of Article 19 of Chapter 160A; and G.S.~~ Article 8 of Chapter 160A; and Articles 7, 9, and 11 of Chapter 160D, effective July 1, 2021, of the North Carolina Statutes, delegated to local governmental units the ~~responsibility~~ authority to adopt regulations designed to promote the public health, safety, and general welfare. Therefore, Town Council of the Town of Kure Beach, North Carolina, does ordain as follows. ~~(Ord. of 6-19-18(1)).~~

B. *Findings of Fact*

1. The flood prone areas within the jurisdiction of the Town ~~of Kure Beach~~ are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
2. These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.
(Ord. of 6-19-18(1))

C. *Statement of Purpose.* -- It is the purpose of this Article to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

1. Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;

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2. Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
3. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
4. Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
5. Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

~~(Ord. of 6-19-18(1))~~

D. *Objectives.* -- The objectives of this Article are to:

1. Protect human life, safety, and health;
2. Minimize expenditure of public money for costly flood control projects;
3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. Minimize prolonged business losses and interruptions;
5. Minimize damage to public facilities and utilities (*i.e.* water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;
6. Minimize damage to private and public property due to flooding;
7. Make flood insurance available to the community through the National Flood Insurance Program;
8. Maintain the natural and beneficial functions of floodplains;
9. Help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
10. Ensure that potential buyers are aware that property is in a special flood hazard area.

[amendments continue on next page]

CHAPTER 13 COMMUNITY DEVELOPMENT AND PUBLIC FACILITIES
(Proposed Text Amendments per 160D)

13.20.020 General Provisions

Current:

- A. *Lands To Which This Article Applies.* This article shall apply to all special flood hazard areas within the jurisdiction, including extra-territorial jurisdictions (ETJs), of the Town of Kure Beach. (Ord. of 6-19-18(1))
- B. *Basis For Establishing The Special Flood Hazard Areas.* The special flood hazard areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its FIS dated August 28, 2018 for New Hanover County and associated DFIRM panels, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of this ordinance. Future revisions to the FIS and DFIRM panels that do not change flood hazard data within the jurisdictional authority of the Town of Kure Beach are also adopted by reference and declared a part of this article. Subsequent letter of map revisions (LOMRs) and/or physical map revisions (PMRs) shall be adopted within three (3) months. (Ord. of 6-19-18(1))
- C. *Establishment Of Floodplain Development Permit.* A floodplain development permit shall be required in conformance with the provisions of this article prior to the commencement of any development activities within special flood hazard areas determined in accordance with the provisions of subparagraph B. (Ord. of 6-19-18(1))
- D. *Compliance.* No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this ordinance and other applicable regulations. (Ord. of 6-19-18(1))
- E. *Abrogation And Greater Restrictions.* This article is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (Ord. of 6-19-18(1))
- F. *Interpretation.* In the interpretation and application of this article, all provisions shall be:
 - 1. Considered as minimum requirements;
 - 2. Liberally construed in favor of the governing body; and
 - 3. Deemed neither to limit nor repeal any other powers granted under state statutes. (Ord. of 6-19-18(1))
- G. *Warning And Disclaimer Of Liability.* The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This article does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the Town of Kure Beach or by any officer or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made hereunder. (Ord. of 6-19-18(1))

CHAPTER 13 COMMUNITY DEVELOPMENT AND PUBLIC FACILITIES

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- H. *Penalties For Violation.* Violation of the provisions of this article or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a Class 1 misdemeanor pursuant to G.S. § 143-215.58. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than one hundred dollars (\$100.00) or imprisoned for not more than thirty (30) days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action as is necessary to prevent or remedy any violation. (Ord. of 6-19-18(1))

Amended:

- A. *Lands to Which This Article Applies.* -- This Article shall apply to all special flood hazard areas within the **planning and development** jurisdiction, ~~including extra-territorial jurisdictions (ETJs), of the Town of Kure Beach.~~ (Ord. of 6-19-18(1))
- B. *Basis for Establishing the Special Flood Hazard Areas.* -- The special flood hazard areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its FIS dated August 28, 2018 for New Hanover County and associated DFIRM panels, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of this ordinance **and all revisions thereto**. Future revisions to the FIS and DFIRM panels that do not change flood hazard data within the jurisdictional authority of the Town of Kure Beach are also adopted by reference and declared a part of this article. Subsequent letter of map revisions (LOMRs) and/or physical map revisions (PMRs) shall be adopted within three (3) months. (Ord. of 6-19-18(1))
- ~~C.~~ *Establishment of Floodplain Development Permit.* -- A floodplain development permit shall be required in conformance with the provisions of this Article prior to the commencement of any development activities within special flood hazard areas determined in accordance with the provisions of subparagraph B. (Ord. of 6-19-18(1))
- ~~D.~~ *Compliance.* -- No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this ordinance and other applicable regulations. (Ord. of 6-19-18(1))
- ~~E.~~ *Abrogation and Greater Restrictions.* This Article is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (~~Ord. of 6-19-18(1)~~)
- F. *Interpretation.* -- In ~~the interpretation and application of~~ **interpreting and applying** this Article, all provisions shall be:
1. Considered as minimum requirements;
 2. Liberally construed in favor of **Town Council** ~~the governing body~~; and
 3. Deemed neither to limit nor repeal any other powers granted under State statutes. (Ord. of 6-19-18(1))

CHAPTER 13 COMMUNITY DEVELOPMENT AND PUBLIC FACILITIES

(Proposed Text Amendments per 160D)

- G. *Warning and Disclaimer of Liability.* -- The degree of flood protection required by this Article is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This Article does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. This Article shall not create liability on the part of the Town ~~of Kure Beach~~ or by any officer or employee thereof for any flood damages ~~that~~ which result from reliance on this article or any administrative decision lawfully made hereunder. ~~(Ord. of 6-19-18(1))~~
- ~~H.~~ *Penalties for Violation.* -- Violation of the provisions of this Article or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a Class 1 misdemeanor pursuant to G.S. § 143-215.58. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than one hundred dollars (\$100.00) or imprisoned for not more than thirty (30) days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action as is necessary to prevent or remedy any violation. ~~(Ord. of 6-19-18(1))~~

[Beth...I notice that some of the cap letters for the paragraphs are shown as being struck thru. That is incorrect...I want to keep those letters, don't know how that occurred, and can't figure out how to correct. Hope you can fix. Thanks]



OATH OF OFFICE

Planning and Zoning Commission

I, Joe Barlok, swear that I will support and maintain the Constitution and laws of the United States and the Constitution and laws of the State of North Carolina not inconsistent therewith, and that I will faithfully discharge my duties as an alternate Member of the Planning and Zoning Commission for the Town of Kure Beach, so help me God.

Joe Barlok, Member

Date: _____

Mandy Sanders, Town Clerk