

**KBC CHAPTER 15 ZONING, ARTICLES 2, 4, 6, and 8**  
*(Proposed Text Amendments per 160D)*

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**Cross reference(s)**—Administration, KBC 2; planning and zoning commission established, KBC 2.06.010 subparagraph A; comprehensive plan adopted, KBC 2.06.010 subparagraph J; animals, KBC 9; dogs prohibited from running at large in the town, KBC 9.04.010; buildings and building regulations, KBC 11; rim district boundaries, KBC 11.04.010; minimum housing code, KBC 11.10.010; numbering of buildings required, KBC 11.12.0101; fences, KBC 11.14.010; requirements for moving buildings, KBC 11.16.010; appeals to board of adjustment upon refusal of building inspected to issue permit to move building, KBC 11.16.060; fire protection and prevention, KBC 2.12; obstructing hydrants prohibited, KBC 8.06.020; garbage and trash, KBC 7.18; licenses and business regulations, KBC 5; yard sales, KBC 8.04.020; peddling and soliciting, KBC 8-81 et seq.; solicitation prohibited in certain areas, KBC 8-81; motor vehicles and traffic, KBC 10; nuisances, KBC 8; certain noises prohibited, KBC 8.04.010; parks and recreation, KBC 13.14; subdivisions, KBC 14; utilities, KBC 7.

**State law reference(s)**—Zoning, G.S. § 160A-381 et seq.; building setback lines, G.S. § 160A-306.

**15.02 IN GENERAL**

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### *(Proposed Text Amendments per 160D)*

The terms for allowable uses are ~~listed defined~~ in this Section ~~of Kure Beach's Zoning Ordinance~~ and the extracts of the 1987 Standard Industrial Classification Manual (SIC), ~~presented set forth~~ in KBC 15.44.010 Appendix A, will be used to determine a uses classification.

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

*Accessory building and use* shall mean a subordinate building, the use of which is incidental to that of a principal building on the same parcel. (See KBC 15.36.040 and KBC 15.36.070)

*Agriculture* (8811) shall mean noncommercial farms, including horticulture, floriculture, dairying, livestock and poultry. No farms shall be operated for commercial purposes, nor shall there be farms for piggeries, or for the disposal of garbage, sewage, rubbish, offal or rendering plants or for the slaughtering of animals, except such animals as have been raised on the premises or have been on the premises for at least a period of 1 year immediately prior thereto and for the use and consumption of persons residing on the premises.

*Alley* shall mean a public or private thoroughfare affording only a secondary means of access to abutting property.

*Alterations* shall mean any change, addition or modification in construction or type of occupancy, any change in the structural members of a building, such as walls, or partitions, columns, beams or girders, the consummated act of which may be referred to herein as altered or reconstructed.

*Apartment* shall mean any building or portion thereof used as a multifamily dwelling for the purpose of providing a complete rental dwelling unit may share means of egress.

*Awning* shall mean a roof like projection which extends from a building to shelter passerby from the weather. The sides of an awning, canopy, or marquee shall be open except for necessary supports, planting boxes and signs.

*Balcony*. An open platform projecting from the wall of a building usually supported by brackets and enclosed by a railing.

*Barrier* shall mean curbs, walls, fences, or similar protective and located to protect public right-of-way and devices designed adjoining properties.

*Basement* shall mean a story partly underground but having at least 60% of its height above the average level of the adjoining ground.

*Beach* shall mean a stretch of land, either public or private, along the Atlantic Ocean starting within the Town's jurisdiction, up to first row of vegetation or structure.

*Block* shall mean the length of street between 2 street intersections.

~~*Board shall mean the board of adjustment.*~~

*Boardinghouse* shall mean rooming house as defined herein.

*Billboard* shall mean any sign or advertisement used as an outdoor display for the purpose of making anything known, the origin or point of sale of which is remote from such display. (See definition of sign below).

~~*Board of Adjustment see KBC 12.04.020.*~~

*Buffer* shall mean an area or means of separating 2 adjacent areas. The design, composition, height, and location of such facilities shall be approved by the town zoning enforcement officer.

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*Buffer strip* shall mean an area or means of separating 2 adjacent areas. The design, composition, height and location shall be approved by the zoning enforcement officer. The buffer strip shall be a solid fence, wall, or a planted strip composed of deciduous and or evergreen trees spaced not more than 10 feet apart, and not less than 1 row of dense shrubs spaced not more than 5 feet apart, which shall be established and maintained in perpetuity by the owner of property whenever required under the terms and provisions of this Chapter.

*Building* shall mean any structure used or intended for supporting or sheltering any use or occupancy.

*Building area* shall mean a structure enclosed and isolated by exterior walls constructed or used for residence, business, industry, or other public or private purposes, or accessory thereto, and including tents, lunch wagons, dining cars and trailers; provided that, however, the term "building" shall not mean nor be construed to include a container. The term "building" shall be construed as if followed by the words or part thereof.

*Building, front line* shall mean that face of the principal building nearest the front line of the lot, facing the road.

*Building, height of* shall mean the vertical distance from the mean elevation of the finished grade of the building site, (the land area immediately below said building) to the highest point of the roof.

*Building Inspector* shall mean the officer or other designated authority charged with the administration and enforcement of the building code or his/her duly authorized representative or agent.

*Building line* shall mean a line, which established the minimum allowable horizontal distance between the lot line and the nearest portion of any structure on the lot. (See yard requirements)

*Building permit* shall mean permission granted by the Building Inspector for the erection, relocation, reconstruction or structurally altering any building.

*Building, principal* shall mean a building in which is conducted the main or principal use of the lot on which said building is situated.

*Cellar* shall mean a story having more than 40% of its height below the average level of the adjoining ground.

*Certificate of compliance* shall mean a certificate that a premise conforms to provisions of the Town's zoning ~~ordinance~~ regulations and building code and may be used or occupied.

*Club* shall mean an organization of persons for special purposes or for the promulgation of sports, arts, science, literature, politics, social or the like.

*Collector street* shall mean a collector street as identified in the thoroughfare plan for the town.

*Common areas and facilities* shall mean those areas of a housing project and of a property upon which it is located within the ~~Town's planning and development regulation~~ jurisdiction ~~of this ordinance that~~ **which** are for the use and enjoyment of the owner of family units located in the project. The areas may include the land, roofs, main walls, elevators, staircases, lobbies, halls, parking space, and community facilities. Community facilities are noncommercial recreational facilities such as a club house, swimming pool, tennis court or beach access for the exclusive use and enjoyment of the owners of family units located in the project.

*Common party walls* shall mean a wall, used jointly by 2 parties under an easement agreement, erected upon a line separating 2 parcels of land, each of which is a separate real estate entity.

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*Common open space* shall mean open areas, the use of which is shared by all tenants and/or property owners, as distinguished from space designated for their private use.

*Condominium* shall mean a system of individual fee ownership of complete dwelling units in a multiunit structure, whose ownership is not time shared, combined with joint ownership or common areas of the structure and land.

*Container* shall mean any standardized shipping container used for intermodal freight transport. Also known as cargo or freight container, ISO or intermodal container, and shipping, sea or ocean container.

*Deck.* An open, unroofed porch or platform extending from or in near proximity from a house or other building.

*Development* shall mean any of the following: the construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure; the excavation, grading, filling, clearing, or alteration of land; the subdivision of land as defined in G.S. 160A-376; or the initiation of substantial change in the use of land or the intensity of the use of land.

*Development Permit* shall mean 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, but not being limited to any of the following: zoning permits; site plan approvals; special use permits; variances; certificates of appropriateness; plat approvals; development agreements; building permits; subdivision of land; state agency permits for development; driveway permits; erosion and sedimentation control permits; and sign permits.

*Disability* a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment.

*Disability Ramp* an inclined plane permanently installed in addition to or instead of stairs. Ramps permit an individual with a disability to more easily access a building.

*District* shall mean a portion of the incorporated and/or extra-territorial area of the Town within which certain regulations and requirements or variances or combinations thereof apply under the provisions of this Chapter. (See KBC 15.08.010)

*Dome.* A large hemispherical roof or ceiling.

*Dwelling modular* shall mean a movable or portable dwelling constructed to be transported as a unit and designed to be placed upon a permanent foundation.

*Dwelling, multifamily* shall mean a building that contains one or two dwelling units used, intended, or designed to be used, rented, leased, let or hired out to be occupied for living purposes.

*Dwelling* shall mean a building or portion thereof used or designed as a residence for 3 or more families having complete independent dwelling units.

*Dwelling, pre-fab* shall mean a dwelling constructed from standardized sections fabricated beforehand for shipment and quick assembly.

*Dwelling, single-family* shall mean a detached building designed for occupancy exclusively by 1 family. A mobile home or trailer is not included in this definition, regardless of the degree of permanence of its attachment to the land.

*Dwelling, two-family* shall mean a building designed for or occupied exclusively by 2 families having complete independent dwelling units.

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*Dwelling*, unit shall mean a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

*Established grade* shall mean the elevation of the street grade as fixed by the Town.

*Expenditure* shall mean a sum of money paid out in return for some benefit or to fulfill some obligation.

*Extraterritorial area* shall mean that land beyond the Town's corporate limits extending for a distance of up to 1 mile in all directions as delineated on the official zoning map for the town.

*Family* shall mean 1 or 2 persons or parents related by blood, marriage, or operation of law together with their lineal descendants, ascendants and/or adopted children and including the domestic employees thereof who occupy the whole or part of a dwelling unit and further comprise a single housekeeping unit, as distinguished from a group occupying a boardinghouse, rooming-house, hotel or motel.

*Fire escape* shall mean a fireproof stairway down an outside wall to help people escape from a burning building.

*Flammable and combustible substances* shall mean substances which will ignite easily and burn freely.

*Flood* shall mean a temporary rise in stream flow that results in water overtopping its banks and inundating areas adjacent to the watercourse.

*Floodplain* shall mean the relatively flat area or low land adjacent to the channel of a river, stream or watercourse, lake or other body of standing water which has been or may be covered by floodwater.

*Floodproofing* shall mean a combination of structural provisions, changes or adjustments to properties and/or structures subject to flooding primarily for the reduction or elimination of flood damage to properties, water and sanitary facilities, structures and contents of buildings.

*Flood protection elevation* shall mean the elevation to which structures and uses regulated by this chapter are required to be elevated or flood proofed. This elevation is shown on the official Flood Hazard Boundary Map (FHBM).

*Garage, private* shall mean an area of the building whose primary purpose is the storage of private vehicles.

*Gazebo*. A freestanding, roofed structure open on the sides.

*Gross floor area* shall mean the total floor space within the exterior walls of the main structure on all floors of floor space devoted to a particular use including the space occupied by such supporting facilities as storage areas, work areas, toilets, hallways, stairways, mechanical equipment and the like.

*Habilitation/rehabilitation facility* means a place providing care, treatment, habilitation, or rehabilitation of, or other services to the mentally ill, the developmentally disabled, or substance abusers.

*Halfway house* means a place for the housing, rehabilitation, and training of persons on probation, parole, or early release from correctional institutions, or other persons found guilty of criminal offenses.

*Historic Preservation Commission* see KBC 12.04.030.

*Home occupation* shall mean an occupation for gain or support conducted only by members of the immediate or extended family residing on the premises, provided use conducted entirely within a dwelling which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof and provided that no article is sold or offered for sale except such as may be produced by members of the family residing on the premises. And that no display of products nor any advertising of any nature shall be visible from the street.

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*Homeless shelter* means temporary housing available to individuals and families experiencing homelessness.

*Hotel* (7011) shall mean a building intended or designed to be used as tourist lodgings which are rented to short term transients where a general kitchen and dining room are provided within the building or in an accessory building. Typical hotel services must be offered including daily linen and maid service, and receipt and disbursement of keys and mail by the attendant at the desk in the lobby or office, for the occupants of the hotel. No hotel facility shall be converted to or used as a multifamily residential dwelling. (See tourist lodgings)

*Impairment* a physical impairment is a physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the body systems. A mental impairment is any mental or psychological disorder.

*Individual with a Disability* a person who has a physical or mental impairment that substantially limits one or more of the major life activities of such individual or a record of such an impairment or is regarded as having such an impairment.

*Industry group No.* (a broad description of an industry), and

*Industry No.* (a more specific breakdown of an industry) are used for brevity at the end of a definition extracted from SIC.

*Industry group No. 653, Industry number 6531:* Real estate agents and managers: Establishments primarily engaged in renting, buying, selling, managing, and appraising real estate for others.

*Industrial No. 7999* shall be acceptable for the following: Amusement and recreation; bath houses; independently operated bathing beaches; public bingo parlors; bridge clubs; bridge instruction; card rooms; golf courses, miniature; operation of golf driving ranges; golf professionals not operating retail stores; golf-pitch and put; gymnastics instruction; handball courts; (except membership clubs); judo instruction; karate instruction, lifeguard service.

*Land development regulation* shall mean any State statute, rule, regulation, or local ordinance affecting the development or use of real property, including any of the following: unified development ordinance; zoning regulation and zoning map; subdivision regulation; erosion and sedimentation control regulation; floodplain or flood damage prevention regulation; stormwater control regulation; wireless telecommunication facility regulation; historic preservation regulation; or housing code.

*Landowner* shall mean any owner of a legal or equitable interest in real property including heirs, devisees, successors, assigns, and the personal representatives of such owners. A landowner may allow a person holding a valid option to purchase the real property to act as his agent or representative for the purpose of submitting a proposed site specific development plan for approval.

*Loft.* A room or storage area within a sloping roof or attic.

*Lot* shall mean a parcel of land whose boundaries have been established by some legal instrument such as a deed or a recorded map and which is recognized as a separate legal entity for purposes of transfer of title. If a public road crosses a parcel of land otherwise characterized as a lot by this definition, the land on each side of the public road shall constitute a separate lot.

*Lot, corner* shall mean a lot at the junction of and abutting upon 2 or more streets. (See KBC 15.36.060).

*Lot, depth* of shall mean the mean horizontal distance between the front and rear lot lines.

*Lot, double frontage* shall mean any interior lot having frontage on 2 or more or less parallel streets as distinguished from a corner lot.

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*Lot, front of* shall mean ~~the front of a lot shall be considered to be~~ that side of the lot which fronts on a street. In the case of a corner lot the narrower side fronting on the street shall be considered ~~to be~~ the front of the lot. In case the corner lot has equal frontage on 2 or more streets, the lot shall be considered to front on that street on which the greatest number of lots front, or if unplatted, on that which the greatest number of lots front, or if unplatted, on that street on which the greatest number of buildings have been erected.

*Lot, interior* shall mean a lot other than a corner lot.

*Lot lines* shall mean the lines bounding a lot as herein defined.

*Lot, reversed corner* shall mean a corner lot which does not front on the same street with the interior lots on the same side.

*Lot, through* shall mean lot, double frontage as defined herein.

*Lot of record* shall mean a parcel of land, the dimensions of which are shown on a recorded plat on file with the New Hanover County Register of Deeds.

*Lot width* shall mean the mean horizontal distance between the side lot lines measured at right angles to the depth.

*Major thoroughfares* shall mean the thoroughfare plan for the Town of Kure Beach.

*Manufacturing* shall mean the making of goods and articles by hand or by machinery with a division of labor.

*Manufactured/Mobile home*: A manufactured/mobile home shall mean a moveable or portable dwelling, a doublewide, consisting of a multi-sectional residential structure of 2 or more sections with 756 sq. ft. minimum area constructed or manufactured in an off site manufacturing facility for installing or assembling on the building site bearing a seal certifying that it was built in compliance with the Federal Manufactured Housing and Construction and Safety Standards, and built after June 15, 1976, meeting all electrical, plumbing and safety standards as required by code. The tongue, axles, transporting lights and removable towing apparatus shall be removed after placement on the lot with the required anchoring and a continuous, permanent masonry wall, with no openings, except for required ventilation and access installed under the home after placement on the lot and before occupancy.

*Manufactured/Mobile home park*: shall mean a parcel of land, at least 3 acres or more, which has been planned and improved for the placement of 2 or more manufactured homes for dwelling purposes.

*Manufactured home space/Lot*: shall mean a parcel of land occupied or intended to be occupied by only 1 ~~and only one (1)~~ manufactured home for the exclusive use of the occupants of said manufactured home. Manufactured home space shall also mean a parcel of land in a manufactured home park described above, provided with the necessary utility connections, patio, and other appurtenances necessary for the erection thereon of only 1 manufactured home, and for the exclusive use of the occupants of said-manufactured home. This definition shall also apply to mobile home spaces.

*Miscellaneous equipment rental and leasing (7359)* shall be acceptable for the following: Electronic equipment rental and leasing, furniture rental and leasing; party supplies rental and leasing; musical instruments rental and leasing, rental and leasing of dishes, silverware and tables; television rental and leasing; hand tool rental and leasing; video recorder and player rental and leasing.

*Mobile home* shall mean a movable or portable dwelling over 32 feet in length and over 8 feet wide, constructed to be transported on its own chassis and designed without a permanent foundation, whether or not a permanent foundation is subsequently provided, which may include 1 or more components that can be retracted for transporting purposes and subsequently expended for additional capacity, or 2 or more

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units separately transportable but designed to be joined into 1 integral unit, as well as a portable dwelling composed of a single unit.

*Mobile home lot* shall mean a plot of ground within a mobile home park designed for the accommodation of 1 mobile home.

*Mobile home park* shall mean any premises used or intended to be used or occupied by 2 or more mobile homes, anchored in place or supported by a foundation or other stationary supports, together with automobile parking space, utility structures, and other required facilities incidental thereon. This definition shall not include mobile home sales lots on which unoccupied mobile homes are parked for purposes of inspection or sale.

*Motel* (7011) shall mean a building intended or designed to be used as tourist lodgings which are rented to short term transients where a general kitchen and dining room are not required. (See tourist lodgings)

*Multi-phased development* shall mean a development containing 25 acres or more that is both submitted for development permit approval to occur in more than one phase and is subject to a master development plan with committed elements showing the type and intensity of use of each phase.

*Municipality* shall mean the Town of Kure Beach.

*Nonconformity, dimensional* shall mean a nonconforming situation that occurs when the height, size, or minimum floor space of a structure or the relationship between an existing building or buildings and other buildings or lot lines does not conform to the regulations applicable to the district in which the property is located.

*Nonconforming lot* shall mean a lot existing at the effective date of this ordinance from which this section was derived or any amendment to it and not created for the purpose of evading the restrictions of this chapter that cannot meet the minimum area or lot width requirements of the district in which the lot is located.

*Nonconforming project* shall mean any structure, development, or undertaking that is incomplete at the effective date of this ordinance from which this section was derived and would be inconsistent with any regulation applicable to the district in which it is located if completed as proposed or planned.

*Nonconforming situation* shall mean a situation that occurs when, on the effective date of this ordinance from which this section was derived or any amendment to it, an existing lot or structure or use of an existing lot or structure does not conform to 1 or more of the regulations applicable to the district in which the lot or structure is located. Among other possibilities, a nonconforming situation may arise because a lot does not meet minimum acreage requirements, because structures do not satisfy maximum height or minimum floor-space limitations, because the relationship between existing buildings and the land in such matters as density and setback requirements is not in conformity with this chapter, or because land or buildings are used for purposes made unlawful by this chapter.

*Nonconforming use* shall mean a nonconforming situation that occurs when property is used for a purpose or in a manner made unlawful by the use regulations applicable to the district in which the property is located. For example, a commercial office building in a residential district may be a nonconforming use. The term also refers to the activity that constitutes the use made of the property. For example, all the activity associated with running a bakery in a residentially zoned area is a nonconforming use.

*Obstruction* shall mean any material body that impedes the natural flow of air, water, moving objects, vision and/or frequencies.

*Off-street loading* shall mean loading space located on the same lot as the principal use, shall mean parking spaces located on the same lot as the principal use. (See parking-remote)

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*On-street loading* shall mean loading space located on public property near or adjacent to principal business. *On-street parking* shall mean parking spaces located on public streets.

*Open porch* shall mean a porch open except for wire screening. A porch shall not be considered open if enclosed by either a permanent or detachable glass sash.

*Ordinance* shall mean ~~these zoning regulations is ordinance~~, including any amendments ~~thereto~~. Whenever the effective date of the ordinance is referred to, the reference includes the effective date of any amendment to it.

*Parking-remote* shall mean parking space provided on any land within 1,000 feet of the main entrance to a principal use.

*Parking area, gross* shall mean the total area provided for the off-street parking of automobiles, including parking stalls and the necessary driveway access space thereto. Walkways, planting strips, and other landscaped areas shall not be counted as gross parking space.

*Parking, combination space* shall mean a lot used for parking that is shared by at least 2 parties.

*Parking space* shall mean the off-street and on-street space available for the parking of motor vehicles.

*Pergola*. A structure consisting of parallel colonnades supporting an open roof of girders and cross rafters.

*Planning and Zoning Commission* *see* **KBC 12.04.010**.

*Porch*. A covered area adjoining an entrance to a building and usually having a separate roof.

*Principal use* shall mean the primary purpose of function that a parcel serves or is intended to serve.

*Professional* shall mean a person with 4 years of college or 4 years in an institute of higher learning with a degree in a field related to the profession. (For example, a doctor, lawyer, architect, etc.)

*Professional, general* shall mean any occupation, which is not of a professional nature.

*Public buildings* shall mean any building or structure meant to benefit the ~~general~~ public and from which the town derives a franchise tax or other form of annual revenue other than property tax or privilege tax. (KBC 15.08.070)

*Public notice* shall mean notification to the public according to the general statutes as specified for public bodies and types of meetings or hearings.

*Recreation* shall mean any form of play, amusement, or relaxation.

*Recreation, commercial* shall mean any form of play, amusement, or relaxation used for monetary gain.

*Recreation, commercial indoor* shall mean any form of play, amusement or relaxation used for monetary gain conducted within an enclosed structure.

*Recreation, commercial outdoor (7999)* shall mean any form of play, amusement or relaxation used for monetary gain not conducted within an enclosed structure.

*Religious institution* means a church, mosque, synagogue, temple or other place of religious worship.

*Religious annex* means a building associated with a religious facility that is maintained and used by a religious organization in accordance with its doctrines, practices, or regulations. A religious annex and its use shall not be considered nor construed to constitute an accessory building and use.

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*Residence* shall mean a dwelling that is used for long term occupancy (i.e., single family homes, 2 family homes, multifamily units, townhouses and condominiums) as distinguished from tourist lodgings.

*Retail, apparel and accessory stores (5611)* shall mean stores primarily engaged in selling new clothing, shoes, hats, underwear, and related articles for personal wear and adornment. Furriers and custom tailors carrying stocks of materials are included. All industry group numbers in this major retail group are acceptable as retail stores ~~for the purpose of these zoning regulations. Kure Beach's zoning.~~

*Retail, building materials, hardware and garden supply (5231 and 5251)* shall mean establishments primarily engaged in selling lumber and other building materials; paint, glass, and wallpaper; hardware; lawn and garden supplies. Only industry group no.'s 5231 and 5251 are acceptable as retail stores for Kure Beach's zoning.

*Retail, eating (5812) and drinking places (5813)* shall mean establishments selling prepared foods and drinks for consumption on the premises and ~~also~~ lunch counters and refreshment stands selling prepared foods and drinks for immediate consumption.

*Retail, food stores* shall mean stores primarily engaged in selling food for home preparation and consumption. Only industry group no.'s (5411, 5441, 5451, and 5461) are acceptable as retail food stores for ~~Kure Beach's zoning the purposes of these zoning regulations.~~

*Retail, general (5331)* shall mean establishments engaged in selling of retail merchandise to the general public for personal or household consumption and rendering services incidental to the sale of the goods.

*Retail, general merchandise stores* shall mean stores, ~~which selling a number of lines of~~ merchandise such as dry goods, apparel and accessories, furniture and home furnishings, small wares, hardware, and food. Only industry group no. 5399 is acceptable as retail stores for ~~Kure Beach's zoning the purposes of these zoning regulations.~~

*Retail, home furniture, furnishings, and equipment stores (5712, 5722. and 5731)* shall mean stores selling goods used for furnishing the home, such as furniture, floor coverings, draperies, glass and chinaware, domestic stoves, refrigerators, and other household electrical and gas appliances. Only industry group no.'s (5712, 5722. and 5731) are acceptable as retail stores for ~~Kure Beach's zoning the purposes of these zoning regulations.~~

*Retail, miscellaneous* shall mean retail stores ~~that are~~ not found in other major groupings (drug and proprietary stores; liquor stores; used merchandise stores; sporting goods stores; book stores; stationery stores; jewelry stores; hobby, toy and game shops; camera and photographic supply stores; gift, novelty and souvenir shops; luggage and leather goods store, sewing, needlework, and piece goods stores; florists; tobacco stores; optical goods store). Industry numbers ~~that which~~ are acceptable as retail stores for ~~Kure Beach's zoning the purposes of these zoning regulations~~ are: (5912, 5921, 5932, 5941, 5942, 5943, 5944, 5945, 5946, 5947, 5948, 5949, 5961, 5992, 5993, and 5995.)

*Roominghouse (7021)* shall mean a tourist lodging that rents single rooms and which may have a common kitchen, living room and bath. (*See* tourist lodgings)

*Setback* shall mean the distance between the minimum building line and the street right-of-way line required to obtain the front side, or rear yard open space provisions of this chapter ~~in order~~ to provide for runoff control, health, safety, firefighting, free flow of air and adequate off-street parking. In the event there is not a street right-of-way involved, then the property line shall be used in establishing the setback.

*Service station (5541)* shall mean an establishment used for the servicing of automobiles, including the sale of gasoline, oil, grease, and minor accessories and washing and polishing, but excluding the sale of automobiles, body repairing and painting.

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### *(Proposed Text Amendments per 160D)*

*Sign* shall mean any words, lettering, numerals, parts of letters, or numerals, figures, phrases, sentences, emblems, devices, trade names or trademarks by which anything is made known, including any surface, fabric or other material or structure designed to carry such devices, such as are used to designate or attracts attention to an individual, a firm, an association, a corporation, a profession, a business, or a commodity or product, which are exposed to public view, and used to attract attention. This definition shall not include the flag, badge, or insignia of any governmental unit.

*Site specific development plan* shall mean a plan submitted to the Town describing with reasonable certainty the type and intensity of use for a specific parcel or parcels and including: the approximate boundaries of the site; significant topographical and other natural features effecting development on the site; the approximate location of proposed buildings, structures, and other improvements on the site; the approximate dimensions, including height, of the proposed buildings and other structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways. For purposes of this Chapter, approved site specific development plans which would establish a vested zoning right prior to the issuance of a building permit include subdivision plats and special use permits. A variance, in and of itself, or a sketch plan that fails to describe with reasonable certainty the type and intensity of use, shall not constitute a site specific development plan.

*Spire*. A steeply pointed roof termination to a tower.

*Stable, private* shall mean a stable with capacity for not more than 2 horses, provided, however, that a private stable may exceed a 2-horse capacity if the premises whereon such stable is situated contains an area of not less than 2,000 square feet for each horse accommodated, provided, however, this chapter shall not be construed to repeal, alter, or amend any ordinance or regulation of the Town relating to the maintenance of animals or livestock within the corporate limits.

*Stand*, as it relates to allowable business uses for the purposes **of these zoning regulations of Kure Beach's Zoning Ordinance**, shall mean the same as building with all the building code regulations and setbacks applied to said stand. (It will be a stand in name only.)

*Story* shall mean that part of a building comprised between a floor and the floor or roof next above.

*Story, half* shall mean a story under a gable, hip or gambrel roof, the wall plates of which on at least 2 opposite exterior walls are not more than 2 feet above the floor of such story.

*Street* shall mean a public road, which affords the principal means of access to abutting property including avenue, place, way, drive, land, boulevard, highway, road, and any other thoroughfare except an alley.

*Street line* shall mean the street line is the dividing line between the street and the lot, as established by the town.

*Structures* shall mean anything constructed or erected, the use of which requires location on the land including freestanding billboards, signs and fences. The term structure shall be construed as if followed by the words, or part thereof.

*Tourist lodgings* (7011) shall mean a building containing rooms designed to be used for the most part as sleeping accommodations for tourist/vacationers or short term transients (i.e., hotel, motel, boardinghouse, roominghouse and bed breakfast) as distinguished from a residential dwelling. No more than 5 percent of the individual units shall be occupied for more than 90 continuous days by the same occupant. The individual unit shall be no larger than 425 square feet in size (exclusive of bathroom, closet and balcony areas). Any unit exceeding 425 square feet in size will meet the dimensional and parking requirements of residential units KBC 15.36.120 and KBC 15.36.220. A tourist lodging shall have 1 water meter and 1 electric meter. Individual metering is prohibited.

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*Town buildings and facilities* shall mean those buildings and facilities that are owned and operated by the Town ~~for the health and welfare of the town~~. (KBC 15.08.060)

*Town Council* shall mean the Mayor and members of the Town's governing body ~~of the Town~~.

*Townhouse* shall mean an individually owned single family dwelling unit constructed in a series or group of attached units with lot line wall or property lines separating such units.

*Trailer* shall mean any vehicle, house car, camp car, or any portable or movable vehicle on wheels, skids, roller, or blocks either self-propelled or propelled by any other means, which is used or designed to be used for residential, living, sleeping, commercial or utility purposes, but not including mobile vehicles primarily designed for the transportation of goods.

*Travel park (7033)* shall mean an area intended and equipped for the temporary parking of vehicles and tents designed for travel, recreational and vacation dwellings

*Travel trailer* shall mean any vehicle or structure designed to be transported and intended for human occupancy as a dwelling for short periods of time, and containing limited or no kitchen or bathroom facilities. Travel trailers shall include the following:

- A. House trailer which shall mean a vehicular, portable structure built on a wheel designed to be towed by a self-propelled vehicle for use as a temporary dwelling for travel, recreational and vacation uses, having a body length not exceeding 32 feet when equipped for road travel.
- B. Pick-up coach which shall mean a portable structure for use as a temporary dwelling for travel, recreational and vacation uses, designed to be mounted on a truck chassis for transportation, and to be used for a temporary dwelling while either mounted or dismounted.
- C. Motor home which shall mean a portable, temporary dwelling to be used for travel, recreational and vacation uses, constructed as an integral part of a self-propelled vehicle.
- D. Camping trailer which shall mean a folding structure manufactured of metal, wood, canvas and/or other materials, mounted on wheels and designed for travel, recreational and vacation uses.
- E. Self-contained travel trailer which shall mean a travel trailer which can operate independent of connections to sewer, water and electrical systems. It contains a water-flushed toilet, lavatory, shower and kitchen, all of which are connected water storage and sewage holding tanks located within the unit.
- F. Dependent trailer which shall mean a travel trailer which does not have a flush toilet, a lavatory, bath or shower.

*Use* shall mean the purpose for which land or a building is arranged, designed or intended, or for which land or a building is or may be occupied.

*Variance* shall mean a modification of the literal provisions of the zoning ordinance granted when strict enforcement of the zoning ~~ordinance~~ regulations would cause undue hardship owing to circumstances unique to the individual property on which a variance is granted.

*Vested right* shall mean the right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan.

*Warehouse* shall mean a building where wares, or goods, are stored, as before distribution to retailers, or are kept in reserve, in bond, etc.

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*Way* shall mean a street, alley, or other thoroughfare or easement permanently established for passage of persons or vehicle.

*Widow's walk.* A railed observation platform usually atop a coastal house.

*Yard* shall mean an open space on the same lot with a building (primary and accessory), unoccupied and unobstructed from the ground upward except by trees, shrubbery, screen walls, fences, ground level decks and walkways, or as otherwise provided for or required under this chapter.

*Yard, front* shall mean a yard across the full width of the lot, extending from the front line of the nearest building on the lot to the front line of the lot.

*Yard, rear* shall mean a yard across the full width of the lot, as measured from the furthest rear point of the principal building to the rear line of the lot.

*Yard, side* shall mean a yard across the full width of the lot, extending from the side line of the principal building on the lot to the side line of the lot.

(Ord. of 11-20-07; Ord. of 4-15-08; Ord. of 3-17-09; Ords. of 5-17-16; Ord. of 2-20-18; Ord. of 12-18-18)

**Cross reference(s)**—Definitions and rules of construction generally, KBC 1.04.010.

#### HISTORY

*Amended by Ord. [15.02.010](#) on 3/12/2020*

*Amended by Ord. [Disability Ramps](#) on 7/20/2020*

#### **15.02.020 Rules Of Construction Reserved**

~~A. Words used in the present tense include the future. The words "used for" include the words "intended for." Words used in the singular number include the plural number and words in the plural number include the singular number. The word "lot" includes the word "plot." The word "structure" includes the word "building." The word "shall" is mandatory and not directory.~~

~~B. The term "Town of Kure Beach" shall have the same meaning as the term City of Kure Beach and the extraterritorial jurisdiction. The term "Town" shall include the Town's planning and development regulation jurisdiction.~~

**Cross reference(s)**—Definitions and rules of construction generally, KBC 1.04.010.

#### **15.02.030 Short Title**

This Chapter shall be known as the "Zoning Ordinance of the Town of Kure Beach ~~and its Extraterritorial Jurisdiction,~~" and the map herein adopted by reference which is on file in the Town Clerk's office is identified by the title, "Zoning Map of the Town of Kure Beach ~~and its Extraterritorial Jurisdiction,~~" and shall be known as the "Zoning Map."

#### **15.02.040 Purpose And Authority**

1. The zoning regulations and districts as herein set forth have been made in accordance with ~~the~~ **Town's a** comprehensive plan for the purpose of promoting the health, safety, morals, and the general welfare of the community. They are designed to lessen congestion in the streets, to secure safety from fire, panic and other dangers to provide adequate light and air, to prevent the overcrowding of land, to avoid undue concentration of population, to facilitate the adequate provisions of transportation, water, sewerage, and other public requirements. They have been made with reasonable consideration, among other things, as to the character of each district and

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its peculiar suitability for particular uses, and with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the community.

2. The provisions of this Chapter are adopted under authority granted by the General Assembly of the State of North Carolina as provided for in Article 7 of Chapter 160D of the General Statutes, particularly G.S. chapter 160A, article 19, part 3.

### **15.02.050 Interpretation Purpose And Conflict**

~~In interpreting and applying the~~ The provisions of this Chapter ~~they~~ shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, prosperity, and general welfare. It is not intended by this Chapter to interfere with or abrogate or annul any easements, covenants, or other agreements between parties. Where this Chapter imposes a greater restriction upon the use of ~~buildings~~ property or premises or upon the height of buildings, or request larger open spaces than are imposed or required by other ordinances, ~~development regulations~~, rules, regulations or by easements, covenants, or agreements, the provisions of this Chapter shall govern, provided nothing in the Chapter shall be construed to amend or repeal any ~~Town ordinance of the town~~ relating to ~~maintenancee~~ maintaining or keeping of horses or livestock or other animals within the Town's ~~planning and development regulation jurisdiction eorporate limits~~.

### **15.02.060 Effects On Rights And Liabilities Under Existing Zoning Ordinance**

This Chapter in part carries forward by reenactment ~~certain some of the~~ provisions of the zoning ~~ordinanceregulations of the town~~ enacted ~~by the Town~~ in prior years. It is not the intention to repeal but rather to reenact and continue in force without interruption such existing provisions, so that all rights and liabilities ~~that~~ which have occurred thereunder are preserved and ~~may be enforced~~ are enforceable. The enactment of this amendment shall not affect any action, suit, or proceeding instituted or pending. ~~All provisions of the zoning ordinance of the town enacted in prior years which are not reenacted herein are hereby repealed.~~

### **15.04 BOARD OF ADJUSTMENT RESERVED**

~~15.04.010 Created~~

~~15.04.020 Qualifications~~

~~15.04.030 Terms~~

~~15.04.040 Chairman; Term; Duties~~

~~15.04.050 Removal; Filling Of Vacancies~~

~~15.04.060 Powers~~

~~Cross reference(s) — Boards, commissions, committees, KBC 2.06.~~

~~State law reference(s) — Board of adjustment, G.S. § 160A-388; Chairman may administer oaths, G.S. § 160A-388(f).~~

#### **15.04.010 Created**

~~A. — A board of adjustment is hereby established. The word board as used in this section shall be construed to mean the board of adjustment.~~

~~B. — The board shall consist of five (5) members. The board members shall hold no other public office under the town government and shall be appointed by the town council.~~

#### **15.04.020 Qualifications**

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~~The members of the board of adjustment shall be citizens and residents of the town. Two (2) alternates may be appointed by the town council.~~

### 15.04.030 Terms

~~The members of the board of adjustment after the initial appointments shall be appointed for a term of three (3) years. Their successors shall be appointed for three (3) year terms to fill the expiring term.~~

### 15.04.040 Chairman; Term; Duties

- ~~A. The chairman of the board of adjustment shall be elected by the full membership including alternate and extraterritorial members of the board of adjustment from among its regular members.~~
- ~~B. The chairman's term of office shall be for one (1) year until his successor is elected and shall be eligible for re-election.~~
- ~~C. The chairman shall decide upon all points of order and procedure unless directed otherwise by a majority of the board in session at the time.~~
- ~~D. The chairman shall appoint any committees found necessary to investigate any matter before the board.~~

### 15.04.050 Removal; Filling Of Vacancies

~~Members of the board of adjustment may, after a public hearing, be removed by the appointing authority for inefficiency, neglect of duty or malfeasance in office. Vacancies occurring for reasons other than expiration of term shall be filled as they occur for the period of the unexpired term. Faithful attendance of the meetings of the board is considered a prerequisite for the maintenance of membership on the board and is defined as no more than three (3) excused absences in a rolling twelve (12) month period. The five (5) members shall have equal voting powers on all matters which come before the board.~~

~~(Ord. of 2-18-19(1))~~

### 15.04.060 Powers

~~The powers and duties of the board of adjustment shall be those as specified by G.S. § 160A-388 or as may be amended by the North Carolina General Assembly.~~

## 15.06 AMENDMENTS RESERVED

### 15.06.010 Changes And Amendments

### 15.06.020 Rezoning Applications

~~State law reference(s) — Method of procedure for amending, G.S. § 160A-384; changes, G.S. § 160A-385; procedure for amending, notice, G.S. § 160A-364.~~

### 15.06.010 Changes And Amendments

~~The town council may, on its own motion or upon or upon a rezoning application as provided for hereunder, after public notice and hearing, amend, supplement, change, modify or repeal the regulations herein established or maps which are part of this chapter, subject to the state law and this chapter. No regulation or map shall be amended, supplemented, changed, modified or repealed until after a public hearing in relation thereto, at which parties in interests and citizens shall have an opportunity to be heard.~~

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**HISTORY**

*Amended by Ord. ~~15.06.010~~ on 9/16/2019*

**15.06.020 Rezoning Applications**

~~A. In the event a zoning applicant is an organization, including but not limited to corporations, limited liability companies, and partnerships, then the application shall include a written statement identifying the organization, its legal status, and the name and address of each person/entity owning a ten percent (10%) or greater share thereof.~~

~~B. No amendment to the Town’s zoning regulations or map shall be initiated nor shall the same be 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.~~

**HISTORY**

*Adopted by Ord. ~~15.06.020~~ on 9/16/2019*

*Amended by Ord. 15.06.020 Rezoning on 3/12/2020*

**15.08 DISTRICT REGULATIONS**

[15.08.010 Districts](#)

[15.08.020 District Boundaries](#)

[15.08.030 Zoning Effect On Building And Land And Uses](#)

[15.08.040 District Regulations](#)

[15.08.050 Uses That Are Prohibited](#)

[15.08.060 Town Buildings And Facilities](#)

[15.08.070 Public Utilities And Facilities](#)

~~[15.08.076 Permit Choice Rule](#)~~

~~[15.08.075 Vested Rights](#)~~

~~[15.08.080 Special Use Permits](#)Quasi-Judicial Zoning Decisions~~

[15.08.090 Site Plan Requirements](#)

[15.08.100 Overlay Districts](#)

[15.08.110 K Avenue Mixed-Use Overlay District](#)

[15.08.120 Downtown Preservation Overlay District](#)

State law reference(s)—Districts, G.S. § 160A-382; method of procedure, G S § 160A-384.

**15.08.010 Districts**

In order to achieve the purposes of this chapter as set forth in KBC 15.02.040, the town is hereby divided into the districts listed below:

RA-1	Residential District
RA-1A	Residential District
RA-2	Residential District
RA-2A	Residential District

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RA-2T	Residential Trailer District
RA-3	Residential District
RA-3A	Residential District
RA-4	Residential District
B-1	Business District
B-2	Neighborhood Business District
B-3	Business District
B-4	Residential Laboratory District
RB-1	Residential Business District

**15.08.020 District Boundaries**

The boundaries of the districts are shown upon the zoning map ~~which is made a part hereof, entitled Zoning Map of the Town of Kure Beach incorporated herein by reference~~ . The zoning map and all notations and all amendments thereto, and other information shown thereon, is hereby made a part of this chapter as if such information set forth on the map were all fully described and set out herein. ~~The zoning map properly attested is also on file in the office of the building inspector and is available for inspection by the public.~~

**15.08.030 Zoning Effect on Buildings, Land, and Uses**

No building or land shall hereafter be used and no building or part shall be erected, moved or altered except in conformity with the regulations specified herein for the district in which it is located except as may be provided in this chapter.

**15.08.040 District Regulations**

- A. Within the districts as indicated on the zoning map, no building or land shall be used and no building shall be erected or altered which is intended or designed to be used in whole or part for any use other than those listed as permitted for that district. A building or the use thereof may be considered changed when its form of occupancy or operation is substantially changed beyond those permitted uses as specified within the designated districts. More than 1 permitted use may be located on a particular site or within a particular building.
- B. Special uses, with appropriate conditions, may be permitted in zoning districts where those uses would not otherwise be allowed. The special use permit procedures are set forth in 15.08.080 and except as otherwise provided in subsection C herein, special uses requiring a permit are identified with an "S."

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

(Ord. of 4-19-11, § 1)

### HISTORY

*Amended by Ord. [15.08.040 District Regs](#) on 4/19/2021*

#### **15.08.050 Uses Which Are Prohibited**

The following uses are prohibited:

Adult book and video stores: SIC codes 5731, 5192, 5947, 5932, 5942 and 5961.

Internet gaming devices: SIC codes 7993 and 7999.

Adult oriented dancing: SIC code 7911.

The use of containers as buildings.

Habilitation/rehabilitation facility.

Halfway house.

Homeless shelters.

(Ord. of 4-19-11, § 2; Ord. of 5-17-16; Ord. of 12-18-18)

#### **15.08.060 Town Buildings And Facilities**

Town buildings and facilities shall be permitted in all zoning districts and shall not be considered to be nonconforming to the area in which they are located. These include, but are not limited to, Town Hall, Town Fire Station, Town garage, various lift stations, well sites, and water storage tanks. Town fire and emergency buildings and facilities shall not be subject to setback requirements.

(Ord. of 10-16-17)

#### **15.08.070 Public Utilities And Facilities**

Public utilities and facilities necessary to the public health, safety and welfare shall be permitted in all zoning districts and shall not be considered nonconforming to the area in which they are located ~~so long as~~ **provided** they do not present a health hazard or create noise pollution.

The public utilities or facilities shall meet all lot setback requirements and height limitations for the districts ~~they~~ **within which they** are located ~~in~~ and such facilities shall be exempt from fence height limitations for the protection of equipment and public safety. Every effort shall be made for the facility to blend in with the district in which they are located and this will be accomplished with fences and/or screening shrubs for small equipment and with the shell of a building for larger equipment.

All public utilities and facilities ~~will need~~ **shall require** final approval by Town Council of site plans. The approval of ~~such~~ site plans in no way ~~shall~~ **negates any local ordinance or law.** ~~town, county, or state codes or regulations.~~

#### **15.08.076 Permit Choice Rule**

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### *(Proposed Text Amendments per 160D)*

- ~~A. In the event an applicant submits a development permit application for any type of development and an ordinance, land development regulation, or rule is amended or changed between the time that application is submitted and a decision on the application is made, the applicant may choose which adopted version of the ordinance, land development regulation, or rule shall apply to the permit and use of the building, structure, or land indicated on the application.~~
- ~~B. In the event the permit applicant chooses the version of the ordinance, land development regulation, or rule that was applicable at the time the permit application was submitted, then the applicant shall not be required to await the outcome of a proposed amendment to said ordinance, land development regulation, or rule prior to acting on the development permit.~~
- ~~C. In the event an applicable ordinance, land development regulation, or rule is amended after a development permit is wrongfully denied or after an illegal condition is imposed, then the applicant may choose which adopted version of the ordinance, land development regulation, or rule shall apply to the permit and use of the building, structure or land indicated on the application.~~
- ~~D. Amendments to land development regulations shall not be applicable or enforceable without the written consent of the landowner regarding the following:~~
- ~~1. Buildings or uses of buildings and land for which a development permit application has been submitted and issued in accordance with the Permit Choice Rule.~~
  - ~~2. Subdivisions of land for which a development permit application has been submitted and issued in accordance with the Permit Choice Rule.~~
  - ~~3. An established vested right that remains valid and unexpired.~~
  - ~~4. A vested right established under the terms of an authorized development agreement.~~
  - ~~5. A multi-phased development which shall be vested for the entire development with the land development regulations then in place at the time site plan approval was issued for the initial phase of the development. A vested right established for a multi-phased development shall remain vested for a period of seven (7) years from the time site plan approval was issued for the initial phase of the multi-phased development.~~
- ~~E. In the event multiple development permits are required to complete the development, the permit applicant may choose the version of each of the applicable land development regulations then in place at the time the application for the initial development permit was submitted. This provision applies only to subsequent permit applications filed within eighteen (18) months after the date on which the initial permit application was approved. For the purposes of this sub-section, an erosion and sedimentation control permit or a sign permit shall not be considered an initial development permit.~~
- ~~F. In the event a permit application is placed on hold at the request of the applicant for a period of six (6) months or more, or in the event an applicant fails to respond to comments or provide additional information reasonably requested by the Town for a period of six (6) months or more, the application review shall be discontinued and the land development regulations in effect at the time the application process is renewed shall be applied to the application.~~

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*(Proposed Text Amendments per 160D)*

### HISTORY

*Adopted by Ord. 15-08-076 on 3/12/2020*

#### **15.08.075 Vested Rights**

- ~~A. A vested right shall be established upon the valid approval of a site specific development plan following notice and public hearing by the Town. 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 approved plan; such a plan deemed approved as of the effective date of the Town's action or ordinance relating thereto. The Town shall not require a landowner to waive any vested rights as a condition of developmental approval.~~
- ~~B. Except as set forth in sub-section C herein, a vested right shall remain vested for a period of two (2) years and the vesting shall not be extended by any amendments or modifications to the site specific development plan unless expressly provided for by the Town.~~
- ~~C. The Town may provide that developmental rights shall be vested for a period exceeding two (2) years but not exceeding five (5) years where extended vesting is warranted, in consideration of all relevant circumstances, by the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions.~~
- ~~D. A vested right shall terminate at the end of the vesting period with respect to buildings and uses for which no valid building permit application has been filed.~~
- ~~E. Nothing herein shall prohibit the Town from revoking the original approval of the site specific development plan for failure to comply with the terms and conditions of the approval or with the provisions of this Chapter.~~
- ~~F. A vested right is not a personal right and shall attach to and run with the property such that all successors to the landowner who obtained the original approval shall be entitled to exercise the rights obtained under that approval.~~
- ~~G. A vested right precludes any zoning action by the Town which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property except:~~
- ~~1. With the written consent of the landowner;~~
  - ~~2. Upon findings, by ordinance and after notice and a public hearing, that hazards on or in the immediate vicinity of the property, if uncorrected, pose a serious threat to public health, safety, and welfare if development were to proceed as set forth in the approved plan;~~
  - ~~3. To the extent the landowner is compensated for all costs, expenses, and losses the landowner incurred;~~
  - ~~4. Upon findings, by ordinance and after notice and a public hearing, that the landowner intentionally supplied inaccurate information or made material misrepresentations which made a difference in the Town approving the site specific development plan; or~~
  - ~~5. Upon the enactment or promulgation of a State or federal law or regulation precluding the development contemplated under the approved site specific development plan. In such an~~

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~~event, the Town may modify the affected provisions of the approved plan upon finding, by ordinance and after notice and a public hearing, that the change in State or federal law has a fundamental effect on the approved plan.~~

~~H.—A landowner claiming a statutory or common law vested right may submit information to and request a determination from the Town's Zoning Officer as to whether such a vested right exists. The landowner may appeal that determination to the Town's Board of Adjustment which shall review the question of whether the vested right exists de novo.~~

### HISTORY

*Adopted by Ord. 15.08.075 on 3/12/2020*

### **15.08.080 Special Use Permits**

~~It is the intention of the town council to create a list of special uses that may be allowed in several zoning districts where those uses would not otherwise be acceptable without appropriate conditions or safeguards. By means of controls exercised through special use permit procedures established below the council can delineate the areas of concern connected with each special use. Permitted special uses are identified with an "S"; i.e., a special use is designated to show that there is something unique about the business and would require special conditions placed upon them. Those businesses are identified with an "(S)".~~

#### *Procedures:*

~~A.—Applications for special use permits shall be processed, considered and voted upon by the town council after a public hearing and after the planning and zoning commission review and make recommendations. Hearings shall be conducted in the same manner as required in KBC 15.12, amendments, except that the town council shall follow quasi-judicial procedures. The planning and zoning commission in recommending approval may include conditions which assure that the proposed use will be harmonious with the area and will meet the intent of this ordinance.~~

~~B.—Special use permit applications shall only be submitted by the property owner(s), or their duly authorized agent. Upon receiving the recommendations of the planning and zoning commission and holding a public hearing, the town council may grant or deny the special use permit. The special use permit, if granted shall include such approved plans as may be required. In granting the special use permit the council shall make the following findings:~~

- ~~1.—That the use will not materially endanger the public health or safety if located where proposed and approved;~~
- ~~2.—That the use meets all required conditions and specifications;~~
- ~~3.—That the use will not substantially injure the value of adjoining property, or that the use is a public necessity; and~~
- ~~4.—That the location and character of the use if developed according to the plan as submitted and approved will be in harmony with the area in which it is located and in general conformity with the comprehensive plan and other plans for the area.~~

~~C.—In granting a special use permit the town council may recommend and impose more restrictive requirements and conditions that it may deem necessary to address the impacts expected to be generated by the use and to assure its conformity with the ordinance and other development plans.~~

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~~Where appropriate, such conditions may also include requirements that street and utility rights-of-way be dedicated to the public and that provisions be made for recreational space and facilities. Such conditions shall not, however, include requirements for which the Town does not have statutory authority to regulate or which the courts have held to be unenforceable by municipalities including, without limitation, taxes, impact fees, building design elements for any structures subject to regulation under the North Carolina Residential Code for One and Two Family Dwellings, driveway related improvements in excess of those set forth in G.S. 136-18(29), or other unauthorized limitations on development or use of land. If the special use permit is denied, the council shall enter the reasons for its action in the findings. Applicants must wait six (6) months after the date of denial to file a new application for the same property.~~

- ~~D. Unless expired or discontinued, any special use permit shall be perpetually binding upon the property unless substantially changed or amended as provided for in this section, or until a use otherwise permitted in the zoning district is established. Special use permits shall become null and void after two (2) years unless use of the property has begun and/or a foundation inspection has been approved.~~
- ~~E. The planning and zoning commission is authorized to approve minor changes in the approved plans for a special use permit as long as they are in harmony with the requirements and conditions of the original special use permit. Such approval shall not be granted should the proposed revisions cause or contribute to:~~
- ~~1. Any change in the character of the development.~~
  - ~~2. [Reserved.]~~
  - ~~3. Any increase in intensity of use such as square footage, number of dwelling units, or site coverage.~~
  - ~~4. [Reserved.]~~
  - ~~5. Substantial changes to traffic circulation or access.~~
  - ~~6. [Reserved.]~~
  - ~~7. Any reduction in the approved setbacks.~~

~~Other changes and amendments of a special use permit require the approval of the town council and shall be handled as a new application.~~

- ~~F. If the owner fails to comply with the plans or any conditions approved by the town council, or if for any reason any condition imposed pursuant to this section is found to be illegal or invalid, such special use permit shall thereupon immediately become null and void and of no effect.~~

(Ord. of 3-18-08(1); Ord. of 4-19-11, § 3)

### HISTORY

*Amended by Ord. 15.08.080 on 3/12/2020*

### 15.08.080 Quasi-Judicial Zoning Decisions

## KBC CHAPTER 15 ZONING, ARTICLES 2, 4, 6, and 8

*(Proposed Text Amendments per 160D)*

- A. *Appeals.* – Except as otherwise provided by the Town Code, the Board of Adjustment shall hear and decide appeals from administrative decisions made under the Town’s development regulations including its zoning regulations. The provisions of KBC 12.06.040 and KBC 12.06.050 are applicable to these appeals.
- B. *Special Use Permits.* –
1. Special uses which may be allowed in certain zoning districts with appropriate conditions and safeguards are identified in the district regulations with an “S.”
  2. Town Council shall hear and decide special use permits in accordance with the provisions of KBC 12.06.050 and may impose reasonable and appropriate conditions and safeguards when granting these permits. Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made for recreational space and facilities. Conditions and safeguards imposed under this subsection shall not include requirements for which the Town is not authorized under statute to regulate nor requirements which courts have held to be unenforceable if imposed directly by the Town including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land.
  3. The regulations may provide that defined minor modifications to special use permits which do not involve a change in uses permitted or the density of overall development permitted may be reviewed and approved administratively. Any other modification or revocation of a special use permit shall follow the same process for approval as is applicable to the approval of a special use permit. If multiple parcels of land are subject to a special use permit, the owners of individual parcels may apply for permit modification so long as the modification would not result in other properties failing to meet the terms of the special use permit or regulations. Any modifications approved apply only to those properties whose owners apply for the modification.
  4. Procedures, --
    - a. Applications for a special use permit shall only be submitted by the landowner or the landowner’s duly authorized agent.
    - b. Town Council shall hear and decide applications for a special use permit following review and comment of the application by the Planning and Zoning Commission. Council is not bound by the recommendations of the Planning and Zoning Commission.
    - c. The provisions of KBC 12.06.050 are applicable to Town Council’s hearing and deciding applications for special use permits.
    - d. In granting a special use permit, Town Council shall find, on the basis of competent, material, and substantial evidence, that the proposed special use:
      - 1) Will not materially endanger the public health, safety, or welfare if located where proposed.

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*(Proposed Text Amendments per 160D)*

- 2) Meets all required conditions and specifications under the Town Code.
  - 3) Will not substantially injure the value of adjoining property (or alternatively, is a public necessity).
  - 4) If developed and used as proposed, will be harmonious and compatible with the area in which it is proposed to be located and is generally consistent with the Town's comprehensive plan.
- e. Special use permits shall become null and void after 2 years unless the approved use has commenced and/or a foundation inspection has been approved.
- f. The Planning and Zoning Commission is authorized to approve minor modifications in the plans for an approved special use provided any such changes comply with sub-sub-sections 1) - 4) immediately above and the conditions imposed by Council on the special use permit, if any, have been met. For the purposes of this sub-subsection, the following shall not be construed as or deemed to be "minor modifications:"
- 1) Changes in the character of the development.
  - 2) Any increase in intensity of the special use such as in its square footage, number of dwelling units, or site coverage.
  - 3) Significant changes to traffic circulation and access to streets and roadways.
  - 4) Any reduction in approved setbacks.

Other modifications to an approved special use permit shall be heard and decided by Town Council as a new application.

C. *Certificates of Appropriateness.* – The Historic Preservation Commission shall hear and decide applications for certificates of appropriateness and appeals from administrative decisions on minor work within the Downtown Preservation Overlay District as set forth in KBC 15.08.120. The provisions of KBC 12.06.050 are applicable to these hearings.

D. *Variances.* – When unnecessary hardships would result from carrying out the strict letter of a zoning regulation, the board of Adjustment shall vary any of the provisions of the zoning regulations upon a showing of all the following:

1. Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions which are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or to the general public, may not be the basis for granting a variance. A variance may be granted

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*(Proposed Text Amendments per 160D)*

when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

3. The hardship did not result from actions taken by the applicant or the property owner provided that, however, the act of purchasing property with knowledge that circumstances exist which may justify the granting of a variance is not a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the zoning regulation, such that public safety is secured and substantial justice is achieved.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. The provisions of KBC 12.06.050 are applicable in hearing and deciding requests for a variance.

**15.08.090 Site Plan Requirements**

Site plans shall be prepared by qualified professionals based upon current land records information. The plan shall be drawn to an accurate scale and legible sizes as required by each parcel and shall contain the following information:

- A. Names of the owner, developer and design professionals;
- B. Scale, dimensions, date, north arrow, property boundaries;
- C. Location, height, number of stories, floor area, setbacks and proposed uses of all structures;
- D. Open space and recreational areas and impervious surface calculations;
- E. Buffering and screening areas, fencing, walls and landscaping indicating the type, number and size of all plantings;
- F. Vehicular and pedestrian circulation including existing and proposed rights-of-way with cross-sections, design details and dimensions;
- G. Location and geometry of all parking, loading, and sanitation pickup;
- H. Conceptual grading, site preparation and stormwater management plans;
- I. Lighting details including type, location, and radius and intensity in footcandles;
- J. Location, height and dimensions of all signs; and
- K. Any additional conditions and requirements that represent greater restrictions on development and use of the site than the underlying zoning district.

(Ord. of 3-18-08(1))

**15.08.100 Overlay Districts**

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*(Proposed Text Amendments per 160D)*

Definition. Overlay zoning districts are established to define certain subareas within which development is subject to restrictions over and above those applicable to the underlying district. Within these overlay districts, any development that occurs must comply not only with the regulations applicable to the underlying district but also with the additional requirements of the overlay district.

(Ord. of 2-18-14; Ord. of 6-20-14)

**HISTORY**

*Amended by Ord. 15 on 4/19/2021*

*Amended by Ord. 15 on 4/19/2021*

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

A. *Purpose and Intent of the K Avenue Mixed-Use Overlay District ("MUOD").*

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

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

C. *Geographic Boundaries of District.* -- The MUOD shall include and consist of lots the entire length of K Avenue between Third Avenue and Seventh Avenue. A condition of applying for a special use permit under the provisions of the overlay district is that any privately owned parking area intended to serve the subject project shall be subject to the provisions of the permit (whether said parking is located in the MUOD proper or not).

D. *Uses Permitted in the MUOD (by special use permit only).*

1. Light retail (*See* retail, miscellaneous, KBC 15.02.010 for definition).
2. Light food service (primarily counter service); seating for no more than fifteen (15) customers.
3. Churches and other places of worship, including parish houses and Sunday schools.

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### *(Proposed Text Amendments per 160D)*

4. Colleges, schools, public libraries, public museums, art galleries, and other public buildings.
  5. Offices of resident members of recognized professions, such as doctors, dentists, engineers, lawyers, architects, where such professions are carried on within the premises.
  6. Customary home occupations.
- E. The following requirements and restrictions shall apply to the MUOD.
1. *Residential component.* Each special use must contain a residential component in compliance with the NC Building Code and other applicable codes and regulations.
  2. *Signs.* Signs in the mixed use area should be small, relatively unobtrusive and compatible with the neighborhood. Towards this end, the following shall apply to the MUOD:
    - a. All regulations described in KBC 15.40.010 to KBC 15.40.120 apply to the overlay district.
    - b. In addition, the following regulations apply:
      - 1) Commercial signs may only be used in conjunction with an actual commercial activity occurring on the premises.
      - 2) A commercial sign may only be attached to the first floor of the building. Such attachment may either be flush or projecting.
      - 3) Only one (1) commercial sign is allowed for each building.
      - 4) Any lighting for the commercial sign must be external. No internally lit signs are allowed in this district. Lighting shall only be allowed during the hours of operation for the business. Lighting for exterior signs must only illuminate the sign and may not "spill over" to neighboring residences.
      - 5) The total area of the commercial sign shall not exceed six (6) square feet.
      - 6) It is encouraged that any commercial sign be attractive, and artistic, such as a carved wooden sign.
      - 7) As defined in KBC 15.40.050, no exposed neon conduit or tubing, interior or exterior neon window signs, interior or exterior LED signs, or lighting displays inside or outside the building to be visible from streets, parking areas or site boundaries are allowed. This includes tube lighting, strong lighting, LED lighting, or typical holiday lighting. Exceptions to this are typical holiday lighting and decorations which contain no commercial message.

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### *(Proposed Text Amendments per 160D)*

- 8) Temporary "A" frame signs, or menu boards shall be approved by the Planning and Zoning Commission, to ensure that safety will be maintained, and that a reasonable time frame for use is established.
3. *Landscaping and hardscaping.* -- Landscaping or hardscaping of property between the street curb and buildings promotes and enhances a comfortable pedestrian scale and orientation. It encourages pedestrian use of the area.

The following design standards shall apply to development in the MUOD:

a. Landscaping.

- 1) All usable open space, such as pedestrian walkways, separations between buildings, yard areas and common recreation areas should be landscaped and provided with an underground irrigation system, or an alternative equivalent system.
- 2) Trees and plants indigenous to southeastern North Carolina are recommended.

b. Walls and fences.

- 1) A four-foot high solid wall or fence should be constructed along the property line of any lot where construction of any residential/commercial mixed-use development is adjacent to property zone and /or used for residential purposes.
- 2) Chain-link, barbed-wire, razor-wire and spikes are prohibited.

c. On-site tree preservation.

- 1) All species of mature oak trees should be preserved and integrated into the project design unless it is shown to be infeasible. Mature trees are defined as trees having a diameter of thirty (30) inches or greater at a height of four and one-half (4.5) feet above adjacent ground.
- 2) Removal of mature trees must be approved by the building inspector, to ensure that the circumstances present at the property warrant removal of the tree(s).

4. *Buffering.*

a. Shielding AC:

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

b. Shielding trash:

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- 1) Outside trash and garbage receptacles shall be no closer than five (5) feet from adjoining property lines.
- 2) There shall be minimum visibility of outside trash and garbage receptacles from the street; all reasonable efforts in this regard shall be made, taking into account the following (criteria for the type of screening to be used):
  - a) The amount and size of receptacles shall be appropriate considering the occupancy of the building.
  - b) If enclosed, screening material should be consistent with the building.
  - c) Recycling should be controlled such as minimize spillover.
  - d) Dumpsters should be on a concrete pad so they can be washed and should be screened from neighboring properties.

#### *5. Lighting.*

- a. A detailed lighting plan shall be submitted with preliminary drawings.
- b. Parking lot lights shall be shielded down, with the lights being not more than ten feet high.
- c. Commercial entrance lights shall be shielded down and directed at the entrance to the property.
- d. Flood and security lights shall be shielded and aimed such as to not create glare on adjoining properties.
- e. Accent lighting shall be low voltage and aimed at the objects to be accented only.
- f. All lighting shall be installed and aimed to minimize light trespassing across property lines.
- g. Restrictions:
  - 1) No lighting shall be aimed toward public streets causing public safety hazards.
  - 2) No laser lights are allowed.
  - 3) No search lights for advertising are allowed.
- h. Bare light sources (including, but not limited to, festive light strands, strands, incandescent, fluorescent, high intensity discharge, LED, fiber optics and neon) used to outline property lines, open sales areas, roof lines, doors, windows the

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edges of walls or any other area of the building or property visible from outside the building are prohibited, except for holiday lighting permitted from Thanksgiving through January 15th of the new year, unless approved as part of a planned lighting program. This section does not apply to a) security lighting with motion detection, b) emergency lighting and c) residential zones.

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

### HISTORY

Adopted by Ord. [15](#) on 4/19/2021

### **15.08.120 Downtown Preservation Overlay District**

- A. *Purpose and Intent of the Downtown Preservation Overlay District (“POD”).*
1. Protecting and preserving, within the designated POD, important elements of the Town’s culture, history, and architecture.
  2. Safeguarding the character and heritage of the POD by preserving the district as a whole and the properties therein which embody those important elements of the Town’s culture, history, and architecture.
  3. Promoting the use and conservation of the POD for the education, pleasure, and enrichment of the residents of the district, the Town, and the State.
  4. Stabilizing and enhancing property values within the POD which will improve the general health, safety, and welfare of the Town’s residents.
- B. *Establishment of the POD.* -- The POD district is hereby established as a historic district overlaying the existing B-1 Business District, the extent and boundaries of which are as indicated on the Town’s official zoning map.
- C. *Effect of the POD.* -- These POD regulations apply in combination with the underlying B-1 district regulations and all other applicable provisions of the Town Code. In circumstances where the B-1 district regulations are silent or where the POD regulations conflict with the B-1 regulations, then the POD regulations shall be controlling.
- D. *Allowed Uses.* -- All uses permitted in the B-1 district, whether by right or as a special use, shall be permitted in the POD district in accordance with the procedures established for such uses.
- E. *Design Standards.* -- Buildings and structures within the POD shall comply with the Design Standards for the Kure Beach Downtown Preservation and Historic District (“Design Standards”).
- F. *Certificates of Appropriateness.*
1. A certificate of appropriateness shall be required for any erection, alteration, restoration, relocation, demolition, or destruction of any exterior portion of any building, structure

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(including masonry walls, fences, light fixtures, steps, pavement, or other appurtenant features), above-ground utility structure, or any type of outdoor advertising sign within the POD.

2. Where required, a certificate of appropriateness shall be granted by the Historic Preservation Commission prior to the issuance of a building permit and a building permit that is issued thereafter shall be in conformity with the certificate.

#### *G. Minor Work Excepted.*

1. Nothing in this section shall be construed to prevent minor work on any exterior feature in the POD district. As used herein, “minor work” is work which does not result in major changes to exterior features in the district and illustrative examples of minor work are set forth in Sec. 3.2 of the Design Standards.
2. Ordinary maintenance, repairs, and other work which does not involve any change to any exterior feature in the POD district are excepted from and are not subject to these regulations.
3. Minor work on exterior features within the POD may be administratively approved by the Building Inspector without a certificate of appropriateness hearing before the Historic Preservation Commission. The request for administrative approval of minor work shall be made to the Building Inspector in writing, describe the work to be performed, and show that the work complies with these standards. A dated letter approving or denying the request shall be issued by the Building Inspector to the applicant generally within 2 business days after the date on which the Building Inspector received the request.
4. Appeals of administrative decisions for minor work shall be made in writing to the Historic Preservation Commission and delivered to the commission’s clerk within 10 days after the date of the Building Inspector’s letter setting forth the administrative decision. The appeal shall be considered and acted upon by the Historic Preservation Commission in a special or regular meeting conducted no earlier than 10 days after the date on which the clerk received the appeal. The commission’s decision on the appeal shall be made in writing and delivered to the appellant, via personal delivery, electronic mail, or certified mail within 10 days after the date of the hearing during which the appeal was taken.

H. *Applications.* -- Applications for a certificate of appropriateness, and payment of any required fee, shall be made to the Building Inspector on forms available in the Building and Inspections Department no later than 30 days before the date of the next regularly scheduled Historic Preservation Commission meeting. Each application shall include sketches, drawings, photographs, specifications, descriptions, and/or other material describing the proposed work and how it complies with the Design Standards. Insufficient applications shall not be processed.

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

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*(Proposed Text Amendments per 160D)*

*J. Hearings and Notice Procedure. --*

1. The provisions of KBC 12.06.050 are applicable to the Historic Preservation Commission hearing and deciding applications for a certificate of appropriateness and appeals of administrative decisions on minor work.
- ~~2.—A notice of hearing shall be mailed to: i) the person or entity whose application is the subject of the hearing; ii) to the owner of the property if the owner is not the applicant; and iii) to the owners of all parcels of land abutting the subject property (“abutting” as used herein to be interpreted and construed as including those parcels directly across the street from the subject property).—~~
- ~~3.—The notice of hearing shall be deposited in the mail at least 10 days but not more than 25 days before the date of the hearing and within that same time period, notice of the hearing shall be posted on the subject property or on an adjacent street or right-of-way.~~
- ~~4.—The HPC Clerk shall provide written certifications of the mailed and posted notice. The certifications shall become a part of the hearing record and shall be deemed conclusive in the absence of fraud.~~
- ~~5.—The HPC Clerk shall transmit to the HPC all applications, reports, and written materials which are relevant to the matter being considered. These materials may also be distributed to members of the HPC prior to the hearing provided that at the same time they are distributed to the applicant and to the property owner if that person or entity is not the applicant. These administrative materials shall become part of the hearing record and may be provided in written or electronic form.~~
- ~~6.—Objections to the inclusion or exclusion of administrative materials may be made before and at the hearing and shall be ruled on at the hearing.~~
- ~~7.—The applicant, the Town, and any person or entity who would have standing to appeal the decision shall have the right to participate as a party at the evidentiary hearing and other witnesses may present competent, material, and substantial evidence that is not repetitive and is allowed by the HPC.~~
- ~~8.—Objections concerning jurisdictional and evidentiary issues, including the timeliness of an appeal or the standing of a party, may be made to the HPC. The HPC Chair shall rule on any objection and the Chair’s rulings may be appealed to the full HPC which will decide the issue by a majority vote.~~

*K.—HPC Decision.*

- ~~2. Provided a complete application for a certificate of appropriateness is filed by the appropriate deadline, the Historic Preservation Commission shall consider the application at its next regular meeting following the deadline.~~
- ~~3. The commission shall review each application under the Review Criteria set forth in subsection K herein and take action to approve, approve with modifications, or deny the application.~~

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*(Proposed Text Amendments per 160D)*

4. Prior to taking final action on an application, the Historic Preservation Commission shall make written findings of fact based upon the Review Criteria and Design Standards and indicating the extent to which the application is, or is not, compatible with the POD, the Review Criteria, and the Design Standards.
5. The commission shall enter into the minutes of its meeting the findings of fact for the action taken.
6. The Historic Preservation Commission shall deliberate and render its decision in open session during the meeting in which the application was considered heard.
7. The commission's decision shall be set forth in writing, be based on the competent, material, and substantial evidence in the record, reflect the commission's determination of contested facts and their application to the Review Criteria and the Design Standards, be approved by majority vote, and signed by the Chair.
- ~~8. The decision shall be effective on the date it is filed with the Town Clerk and shall be delivered within a reasonable time, via personal delivery, electronic mail, or certified mail, return receipt requested, to the applicant, the property owner if different from the applicant, and to any person or entity that submitted, before the effective date of the decision, a written request for a copy thereof. The person providing notice of the decision shall certify in writing that proper notice has been provided and the certification shall become a part of the hearing record and be deemed conclusive in the absence of fraud.~~

### *K. Review Criteria.*

2. The regulations set forth herein and the Design Standards are intended to, insofar as is reasonable, ensure that the exterior portions of the buildings and structures within the POD shall be harmonious. However, it is not the intent of these regulations or the Design Standards to require the reconstruction or restoration of any buildings or structures, prohibit their demolition or removal, or impose any architectural style.
3. In determining an application for a certificate of appropriateness, the Historic Preservation Commission shall consider the historic and/or architectural significance of the building or structure under consideration, the exterior form and appearance of the proposed changes thereto, and the effect the proposed changes would have upon the other buildings and structures within the POD.
4. The commission shall make no requirement except to prevent work that is incongruent with the POD.
5. Applicants shall consult the Design Standards which will be utilized in administering these regulations.
6. The Historic Preservation Commission shall base its decisions on exterior form and appearance, the Design Standards, and the following criteria:
  - a. The setbacks, lot coverage, yards, orientation, and positioning of the building or structures

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*(Proposed Text Amendments per 160D)*

- b. Materials, surface textures, and patterns.
  - c. Architectural details.
  - d. Roof shapes, forms, features, and materials.
  - e. The proportions, shapes, positions, locations, and patterns of doors and windows.
  - f. The general form and proportions of the buildings and structures.
  - g. Appurtenant features including, without limitation, walls and fences.
7. Nothing in the Review Criteria or in the Design Standards shall be interpreted or construed as preventing or restricting the authority to erect buildings to a height of 35 feet above ground level in accordance with N.C. Sess. Law 2006-126.
- L. *Interior Arrangements Not Considered.* -- When determining applications for certificates of appropriateness, the Historic Preservation Commission shall not consider the interior arrangement of the subject buildings or structures.
- M. *Relocation and Demolition.*-- Per N.C.G.S. § 160D-949, applications for a certificate of appropriateness for the relocation, demolition, or destruction of a building or structure within the POD shall not be denied.
- N. *Certain Changes Not Prohibited.*-- Nothing in these POD regulations or the Design Standards shall be construed to prevent the ordinary maintenance or repair of any exterior feature in the POD that does not involve a change in design, material, or appearance thereof nor to prevent the construction, reconstruction, alteration, restoration, relocation, or demolition of any such feature that the Building Inspector shall certify in writing is required for public safety because of an unsafe or dangerous condition. Nothing in these regulations or the Design Standards shall be construed to prevent a property owner from making any use of his property that is not prohibited by any other law.
- O. *Successive Applications.*-- In the event the Historic Preservation Commission denies an application for a certificate of appropriateness, a new application affecting the same property may be submitted if substantial changes are made in the original plans for the proposed work on the building or structure.
- P. *Appeals.* -- The applicant or the property owner if different from the applicant, may appeal the issuance or denial of an application for a certificate of appropriateness to the Board of Adjustment in the nature of certiorari within the times prescribed for appeals of administrative decisions set forth in KBC 12.06.040.C. To the extent applicable, the provisions of G.S. 160D-1402 apply to appeals in the nature of certiorari to the Board of Adjustment.
- Q. *Lapse of Approval.* -- All certificates of appropriateness shall expire 1 year from the date of issuance. The Historic Preservation Commission may grant an extension of up to 1 year provided the commission finds that substantial progress has been made under the certificate or that the recipient encountered unforeseen difficulties which caused the delay.

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*R. Compliance.*

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