

**TOWN OF KURE BEACH
ORDINANCE 15.08.120**

NOW THEREFORE, be it ordained by the Council of the Town of Kure Beach, in the State of North Carolina, as follows:

SECTION 1: **ADOPTION** “15.08.120 Downtown Preservation Overlay District” of the Town of Kure Beach Municipal Code is hereby *added* as follows:

BEFORE ADOPTION

15.08.120 Downtown Preservation Overlay District (Non-existent)

AFTER ADOPTION

15.08.120 Downtown Preservation Overlay District(*Added*)

- 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 KBC. In circumstances where the B-1 district regulations are silent or where the POD regulations conflict with the B-1 regulations, then the POD regulations shall be controlling.
- D. Allowed Uses. All uses permitted in the B-1 district, whether by right or as a Special Use, shall be permitted in the POD district in accordance with the procedures established for such uses.
- E. Design Standards. Buildings and structures within the POD shall comply with the Design Standards for the Kure Beach Downtown Preservation and Historic District (“Design Standards”).
- F. Certificates of Appropriateness.
1. A Certificate of Appropriateness (“COA”) shall be required for any erection, alteration, restoration, relocation, demolition, or destruction of any exterior

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

2. Where required, a COA shall be granted by the Kure Beach Historic Preservation Commission (“HPC”) prior to the issuance of a building permit and a building permit that is issued thereafter shall be in conformity with said COA.

G. *Minor Work Excepted.*

1. Nothing in this section shall be construed to prevent minor work on any exterior feature in the POD district. For the purposes of this section, “minor work” shall be interpreted and construed to mean ordinary maintenance, minor repairs, and other work which does not involve a substantial change in the design, material, or appearance of an exterior feature. Examples of 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 Town’s Building Inspector without a COA hearing before the HPC. The request for administrative approval of minor work shall be made to the Building Inspector in writing, describe the work to be performed, and show that the work complies with these standards. A dated letter approving or denying the request shall be issued by the Building Inspector to the applicant generally within two (2) business days after the date on which the Building Inspector received the request.
4. Appeals of administrative decisions for minor work shall be made in writing to the HPC and delivered to the commission’s Clerk within ten calendar (10) days after the date of the Building Inspector’s letter setting forth the administrative decision. The appeal shall be considered and acted upon by the HPC in a special or regular meeting conducted no earlier than ten (10) calendar days after the date on which the Clerk received the appeal. The HPC’s decision on the appeal shall be made in writing and delivered to the appellant, via personal delivery, electronic mail, or certified mail, return receipt requested, within ten (10) calendar days after the date of the hearing during which the appeal was taken.

- H. *COA Applications.* Applications for a COA, and payment of any required fee, shall be made to the Building Inspector on forms available in the Building and Inspections Department no later than thirty (30) days before the date of the next regularly scheduled HPC 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 COA application under the Design Standards and the Review Criteria set forth in subsection L herein. Based upon the review, the Building Inspector shall provide a report on the COA application to the HPC. The Building Inspector may determine, based upon review of

the application, that the proposed work constitutes minor work and may approve the same in the manner set forth in subsection G above.

J. Hearings and Notice.

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

K. HPC Decision.

1. Provided a complete application for a COA is filed by the appropriate deadline, the HPC shall consider the application at its next regular meeting following the deadline.
2. The HPC shall review each COA application under the Review Criteria set forth in subsection L herein and take action to approve, approve with modifications, or deny the application.
3. Prior to taking final action on an application, the HPC shall make written findings of fact based upon the Review Criteria and Design Standards and indicating the extent to which the application is, or is not, compatible with the POD, the Review Criteria, and the Design Standards.
4. The HPC shall enter into the minutes of its meeting the findings of fact for the

action taken.

5. The HPC shall make deliberate and render its decision in open session within a reasonable time and preferably during the meeting in which the application was considered heard.
6. The HPC's decision shall be 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 by the HPC, and signed by the Chair.
7. The decision shall be effective on the date it is filed with the Town Clerk and shall be delivered within a reasonable time, via personal delivery, electronic mail, or certified mail, return receipt requested, to the applicant, the property owner if different from the applicant, and to any person or entity that submitted, before the effective date of the decision, a written request for a copy thereof. The person providing notice of the decision shall certify in writing that proper notice has been provided and the certification shall become a part of the hearing record and be deemed conclusive in the absence of fraud.

L. Review Criteria.

1. The regulations set forth herein and the Design Standards are intended to, insofar as is reasonable, ensure that the exterior portions of the buildings and structures within the POD shall be harmonious. However, it is not the intent of these regulations or the Design Standards to require the reconstruction or restoration of any buildings or structures, prohibit their demolition or removal, or impose any architectural style.
2. In determining COA applications, the HPC shall consider the historic and/or architectural significance of the building or structure under consideration, the exterior form and appearance of the proposed changes thereto, and the effect the proposed changes would have upon the other buildings and structures within the POD.
3. The HPC shall make no requirement except to prevent work that is incongruent with the POD.
4. COA Applicants shall consult the Design Standards which the Town will utilize in administering these regulations.
5. The HPC shall base its COA decisions concerning exterior form and appearance on the Design Standards and the following criteria:
 - a. The setbacks, lot coverage, yards, orientation, and positioning of the building or structure;
 - b. Materials, surface textures, and patterns;
 - c. Architectural details;
 - d. Roof shapes, forms, features, and materials;
 - e. The proportions, shapes, positions, locations, and patterns of doors and windows;
 - f. The general form and proportions of the buildings and structures; and
 - g. Appurtenant features including, without limitation, walls and fences.
6. Nothing in the Review Criteria or in the Design Standards shall be interpreted

or construed as preventing or restricting the authority to erect buildings to a height of 35 feet above ground level in accordance with N.C. Sess. Law 2006-126.

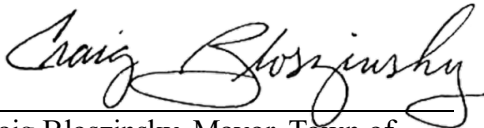
- M. *Interior Arrangements Not Considered.* When determining COA applications, the HPC shall not consider the interior arrangement of the subject building(s) or structure(s).
- N. *Relocation and Demolition.* Per N.C.G.S. § 160D-949, applications for a COA for the relocation, demolition, or destruction of a building or structure within the POD shall not be denied.
- O. *Certain Changes Not Prohibited.* Nothing in these POD regulations or the Design Standards shall be construed to prevent the ordinary maintenance or repair of any exterior feature in the POD that does not involve a change in design, material, or appearance thereof nor to prevent the construction, reconstruction, alteration, restoration, relocation, or demolition of any such feature that the Building Inspector shall certify in writing is required for public safety because of an unsafe or dangerous condition. Nothing in these regulations or the Design Standards shall be construed to prevent a property owner from making any use of his property that is not prohibited by any other law.
- P. *Successive Applications.* In the event the HPC denies a COA, a new application affecting the same property may be submitted if substantial changes are made in the original plans for the proposed work on the building or structure.
- Q. *Appeals.* The applicant or the property owner if different from the applicant, may appeal the issuance or denial of a COA to the Kure Beach Board of Adjustment in the nature of certiorari within thirty (30) days after the date of their receipt of the written notice of decision. Any other person or entity who would have standing to appeal the decision, and who received notice of the decision in accordance with sub-sub-section 7 of sub-section K herein, shall have thirty (30) days from the date they received the notice within which to appeal to the Board of Adjustment.
- R. *Lapse of Approval.* All COAs shall expire one (1) year from the date of issuance. The HPC may grant an extension of up to one (1) year provided the commission finds that substantial progress has been made under the COA or that the recipient encountered unforeseen difficulties which caused the delay.
- S. *Compliance.*
1. Failure to comply with a COA shall constitute a violation of KBC Chapter 15 and shall be enforceable as provided for under KBC 15.42.010 Civil Penalty.
 2. The discontinuance of work or the lack of substantial progress under a COA for a period of one (1) year shall be considered as a failure to comply with the COA and the enforcement of any remedy under Chapter 15 shall not prevent the application of any other remedy or remedies available under the Town's Code of other statutes, ordinances, or rules.

PASSED AND ADOPTED BY THE TOWN OF KURE BEACH COUNCIL APRIL 19, 2021.

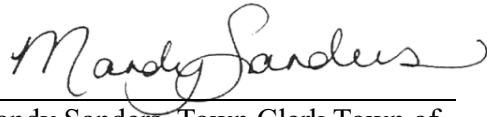
	AYE	NAY	ABSENT	ABSTAIN
Commissioner John Ellen	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Commissioner Allen Oliver	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Commissioner David Heglar	<u> </u>	<u>X</u>	<u> </u>	<u> </u>
Commissioner Joseph Whitley	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Mayor Craig Bloszinsky	<u>X</u>	<u> </u>	<u> </u>	<u> </u>

Presiding Officer

Attest



Craig Bloszinsky, Mayor, Town of Kure Beach



Mandy Sanders, Town Clerk Town of Kure Beach

