



TOWN COUNCIL MINUTES

REGULAR MEETING

May 20, 2019 @ 6:00 p.m.

The Kure Beach Town Council held its regular meeting on Monday, May 20th, 2019 beginning at 6:00 pm. There was a quorum of Council and the Town Attorney was present.

COUNCIL MEMBERS PRESENT

Mayor Craig Bloszinsky
(MPT) David Heglar
Commissioner Joseph Whitley
Commissioner Allen Oliver
Commissioner John Ellen

COUNCIL MEMBERS ABSENT

None

STAFF PRESENT

Town Clerk – Nancy Avery
Finance Officer (FO) – Arlen Copenhaver
Building Inspector – John Batson
Police Chief – Mike Bowden
Recreation Director – Nikki Keely
Public Works Director – Jimmy Mesimer
Fire Chief – Ed Kennedy

Mayor Bloszinsky called the meeting to order at 6:00 pm. Pastor Dan Keck gave the invocation and led in the Pledge of Allegiance.

APPROVAL OF CONSENT AGENDA ITEMS

1. Approval of change order #5 for facility construction project in amount of \$6,897
2. Approve Budget Amendment 19-06, totaling \$59,600 for storm water project change order
3. Approve Budget Amendment 19-07, totaling \$33,231 for radios for Police, Fire, Lifeguards and Public Works
4. Minutes:
 - April 15, 2019 Regular
 - April 15, 2019 Budget Workshop #2
 - April 15, 2019 Closed Session



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MOTION- MPT Heglar made a motion to approve the consent agenda as presented

SECOND- Commissioner Whitley

VOTE- Unanimous

ADOPTION OF THE AGENDA

MOTION- Commissioner Oliver made a motion to adopt the agenda as presented

SECOND- Commissioner MPT Heglar

VOTE- Unanimous

DISCUSSION AND CONSIDERATION OF PERSONS TO ADDRESS COUNCIL

Becky Blackmore stated:

- Lives in Ocean Dunes
- As of last Saturday she is the President of the Ocean Dunes HOA
- The Town Liaison for Ocean Dunes
- Came to compliment several Town agencies
- Public Works Director Mesimer addressed two situations recently in a timely manner
- A neighbor who had ongoing pool construction cut a major line and the Public Works department stayed for hours working through the night
- The Fire Department responded quickly to a car fire to keep it from spreading
- The Police Department always takes care of situations promptly and professionally
- Building Inspector Batson always handles items quickly
- The Town Council has a lot to be proud of with their Staff
- A simple request concerning the new parking bumpers is the rear end of the larger trucks extend out into the bike lane blocking residents from being able to pull out of driveways

Mayor Bloszinsky stated the Town will look into the parking with the Public Works Director Mesimer.

SPECIAL USE PERMIT APPLICATION HEARING

The Mayor called the hearing to order at 6:10 p.m.

Mayor Bloszinsky stated the text amendment by addition of Golf Cart Rentals to Chapter 19, Zoning, Article III, Division 10, Sec 243 (permitted uses B1), 2) Chapter 19, Zoning, Application A Section Codes, 3) Chapter 19, Zoning, Application B. Request by Sheila and Dean Embler on behalf of the property owner, Sam Khatic, to grant a Special use Permit to the property located at 112 Ft. Fisher Blvd. South, Kure Beach, NC, to operate a golf cart rental/taxi



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cab service. At this point in time I would like to swear in the witnesses, anyone or staff that will be testifying. The applicants and opponents that should testify please come forward to swear in. The Special use process requires a quasi-judicial hearing; therefore, any person wishing to testify must be sworn in. All persons who signed in to speak or who want to present testimony please step forward to be sworn in.

Mayor Bloszinsky asked those who came forward to testify to put their hand on the bible and asked do you and each of you solemnly swear the testimony you are about to give is the truth, the whole truth, and nothing but the truth so help you God.

Building Inspector John Batson stated yes.

Planning and Zoning Chairman Craig Galbraith stated yes.

Applicants Sheila and Dean Embler stated yes.

Craig Galbraith Chairman of Planning & Zoning Commission stated:

- This is an application the commission has looked at for several months
- The applicant has brought information to the P&Z commission several times
- The commission has worked through a number of issues with the applicant and now send it forward to Council to approve with the recommendations
- There are a number of stipulations or suggestions in terms of the approval process
- First is to designate orderly parking spaces on the property for the golf carts when not in use
- Recommend the golf carts exit the property with a right turn only onto S Fort Fisher Blvd.
- The commission was concerned about the look of the building that would be placed there, and looked at several different designs
- The structure to be located on the property shall be limited to the "C Cabin" illustrated in the Premier Advertising brochure included with the materials submitted for P&Z review
- This would be a temporary building in the B1 district
- The Town can't regulate temporary or trailer buildings in the B1 district and is an allowable building but want to make sure with the Special Use Permit that it was an attractive building
- One item that concerned him as he has done work in multiple downtown districts has to do with the lighting plan
- Applicant had a dusk to dawn lighting plan
- Recommended prior to its hearing on the application a clearly described lighting plan appropriate for the property's location
- Don't want bright lights shining into other residents homes



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- P&Z Commission recommends a lighting plan that does not exceed, a specified lumens; and does not exceed, at the respective property lines, 0.1 foot-candles adjacent to commercial uses and 0.05 foot-candles adjacent to residential uses
- Require liability insurance be allocated to the Town of Kure Beach in the amount of one million dollar coverage
- Recommending approval with these suggestions

Building Inspector Batson stated he doesn't have much to add to what P&Z Chairman Galbraith said. The owners have done their due diligence and have given all items requested. The copy of the certificate of insurance has been provided.

Applicant Sheila Embler stated thank you everyone for their time and for allowing us look at this opportunity. As we have told the P&Z commission we're just trying to better serve the community in an easier and safer way. Sun Fun Rentals has had more people calling to use the taxi and limo services recently.

Applicant Dean Embler stated:

- Wanted to address one thing regarding the insurance policy to let Council know this is the same policy that was required in Carolina Beach
- Try to be very involved in the community with the Chamber of Commerce and have given back to the community by donating golf carts to the beach festivals and community events
- Glad the residents came to share their concerns so he knows more he can do over the next 3 months
- If there is anything that needs to be addressed in the future with the neighbors he is willing to speak one on one to see what can be done
- Trying to make sure these golf carts are safe as possible as it's their liability insurance
- We're thankful for all the opportunities in Carolina beach and hope to do the same in Kure Beach

Mayor Bloszinsky asked is there any oppositions that would like to be sworn in? As there were none, the Mayor closed the hearing at 6:23 p.m.

Board Discussion on Topic

Commissioner Oliver asked Building Inspector Batson do we have the lighting plan and does it meet the requirements?

Building Inspector Batson replied he did receive the lighting plan and it meets the requirements.



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MPT Heglar commented 0.05 foot- candles is almost nothing and those lights must be really shorted on the outside which is good for the residents around that area. He asked Building Inspector Batson looking at what we would add or change to all the permitted usages right now. Bus transfer station is one of them. If any of these listed items came before the Building Inspector today it wouldn't have of gone through this process, correct?

Building Inspector Batson stated the ones with an "S" in front of it would have gone through this process.

P&Z Chairman Craig Galbraith stated there are two issues before the Council. One is the applicant with the Special use permit for parking lots. Another is the text amendment to add golf carts rentals to Chapter 19. But they're two separate discussion points. P&Z's recommendation to the text amendment is to add 7999 to Chapter 19.

Mayor Bloszinsky stated there were special conditions that you put on the applicant as you identified the height of the structure and the gravel. The applicant has said he will do some additional items. Attorney Andy Canoutas do we need to identify those items.

P&Z Chairman Craig Galbraith answered yes you would. These would be conditions you place on a Special Use permit.

Mayor Bloszinsky stated so we need to identify that the Town expects the landscape plan and the gravel to keep down the dust.

MPT Heglar stated Mayor Bloszinsky question is during the discussion with the applicant he committed to additional items and Mayor Bloszinsky wants to know if Council can add these items into the discussion before we approve. Because of the dust gravel is needed which would be about 4000 sqft of gravel for where the parking and driveway would be. He wants to make sure the applicant is comfortable with this before we add it as a condition.

Applicant Embler commented he told the homeowners he would put a couple loads of gravel in the entrance way.

MPT Heglar understands it would not be the whole parking lot but wants to make sure it is added properly to the approval.

Mayor Bloszinsky stated we have concerned citizens and a good business plan that provides a cab service that is currently lacking in our Town which could help get some drivers off the street. He wants to make sure these conditions are addressed in the approval.



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MPT Heglar stated the two conditions added would be the sign for left turn only on 3rd Ave and the gravel.

Mayor Bloszinsky asked the applicants do you agree with the staff findings and the additions proposed?

Applicants Shelia and Dean Embler responded yes.

MPT Heglar made a motion to approve the text amendment by the addition of golf carts to the Sections here and above scribed for zoning amendment by the Planning and Zoning commission and the associated consistency statement 19-01

SECOND- Commissioner Ellen

VOTE- Unanimous

MOTION- MPT Heglar made a motion to approve as the board finds that the application for Special Use Permit meets the 4 required conclusions based on the finding of facts concluding the staff summary zoning consistency statement

SECOND- Commissioner Oliver

VOTE- Unanimous

DISCUSSION AND CONSIDERATION OF COMMITTEE BUSINESS

1. Marketing Committee

- FY 19-20 Budget Presentation

Marketing Chairperson Debbie Elliot stated:

- Here to present the marketing budget for FY19-20
- Received 11.7% increase from New Hanover County
- Still advertising for media but cost has gone down
- Paid Social media moved influencer marketing to social media plan
- Programmatic has increased significantly
- Publisher direct has increased
- 7% increase in media plan
- The main change in this year's budget is there is less print advertising and more digital, which is a better investment with a limited budget
- The committee is requesting approval of the \$216,511.00 budget

MOTION- Commissioner Oliver made a motion to approve the FY 19-20 marketing budget

SECOND- MPT Heglar

VOTE- Unanimous



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2. Shoreline Access and Beach Protection

- Authorization to purchase 7 vests at \$30 each for Ocean Life project volunteers from committee budget – total \$183

Chairperson Dennis Panicali stated:

- Need Councils approval for including purchase of vests in the budget
- The vests are for a program the committee is starting this summer
- The vests will have pockets and volunteer listed on back of the vest
- Program to begin June 9th

MOTION- Commissioner Whitley made a motion to approve the authorization to purchase 7 vests at the price of \$30 each Ocean Life project volunteers from committee budget in the amount of \$183

SECOND- Commissioner Ellen

VOTE- Unanimous

3. Planning & Zoning Commission

- Guidance on regulation of B-1 and surrounding districts

Craig Galbraith Planning and Zoning Chairman stated:

- Several months ago Council charged the Commission to develop an overlay district in the B-1 district to maintain a village feel
- The Commission has held public hearings and asked businesses for input
- A lot of research has been completed and now would like to show the research and ask for some guidance from Council
- The Certification of Appropriateness process is the best way to manage the “look” and “feel” of an area that has some significance to the town
- COA is the easiest method to address architectural elements, materials, and compatibility to the surrounding buildings and community
- Only other method is through a SUP overlay process, but that is very cumbersome for design issues (requires public hearing for each alteration, zoning maps, etc.)
- In North Carolina, COA is the only method to influence the look of residential units (1 or 2 unit)
- In North Carolina, COA process must be tied to an Local Historic District designation - often called “Character Preservation” Overlay Districts
- Local Historic Districts/COA process need not be complicated (many hundreds of LHDs/COAs in NC, some complicated, others simple)
- COA Design Guidelines for commercial properties tend to focus on “Building Exteriors” (can also designate uses)
 - Materials
 - Paint and Paint Color
 - Storefronts



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- Architectural Features
- Roofs
- Compatibility
- Recommendation to Council is to give the Commission guidance and allow the P&Z Commission to push forward in this direction to start the process of the application to designate a historic district
- Also allow the Commission to look outside that area into creating an overlay district with a few more restrictions

MPT Heglar asked why the commission looked outside of the B-1 district on the north and south end.

Chairman Craig Galbraith commented some members of the commission noticed that there are a few businesses outside of the B-1 district that could possibly be converted into something the Town may not want in this area.

Commissioner Oliver stated he likes the information but needs more time to review.

Planning and Zoning to review and bring further information regarding the historic district with feedback.

DISCUSSION AND CONSIDERATION OF DEPARTMENT HEAD BUSINESS

1. Administration

- Schedule date in June for Department Head evaluations

MOTION- MPT Heglar made a motion to schedule the Department evaluations for June 17th at 12 p.m.

SECOND- Commissioner Whitley

VOTE- Unanimous

2. Finance Department

- Presentation of budget message, draft FY19-20 budget ordinance and fee schedule.

Finance Officer Copenhaver gave an overview of the proposed FY19-20 budget. The presentation including the Budget Message, Budget Ordinance and Fee Schedule is herein included as part of these minutes.

MOTION- MPT Heglar made a motion to direct Town Clerk to advertise that the proposed budget is available for inspection with a public hearing on Monday, June 10, 2019 at 6:00 p.m.

SECOND- Commissioner Whitley

VOTE- Unanimous



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- Approval of Resolution R19-06 approving financing terms with BB&T in amount not to exceed \$1.4 million at an interest not to exceed 2.78 percent for a term not to extend 10 years for water meter replacement and automatic meter reading system

Finance Officer Copenhaver stated:

- Project for replacing water meters
- Sent out request for proposals to 7 banks
- Received 3 proposals back
- Recommends accepting the best proposal from BB&T
- A 10 year loan at 2.7%
- Need Council to approve and adopt this resolution

MOTION- Commissioner Oliver made a motion to approve Resolution R19-06 approving financing terms with BB&T in amount not to exceed \$1.4 million at an interest not to exceed 2.78 percent for a term not to extend 10 years for water meter replacement and automatic meter reading system

SECOND- MPT Heglar

VOTE- Unanimous

3. Public Works Department

Public Works Director Mesimer stated:

- Couple updates from the Public Works Department
- Council asked for a storm water assessment along Settlers
- Starting at 309 over to MOTSU land
- Price for the material is \$17,571.28
- Public Works Department is looking to take this project on to save money
- Project down in Ocean Dunes is almost complete
- Fixing of the man holes should be completed by Thursday
- Need Council guidance on storm water assessment
- Received a response from the engineer so need to know if he should proceed or find another firm

MPT Heglar stated the issues that Council has brought up was that there was belief Brian Cox's firm did a lot of storm water work in the neighborhoods Council was concerned about. Only one project that wasn't in the concerning area was completed by his firm. Need to decide if Public Works Director Mesimer should get a quote from Brian Cox or should he proceed with getting one from another firm.



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Commissioner Oliver commented it was his belief that Council had put that to rest. Brian Cox is a professional engineer and he is fine with moving forward with Engineer Brian Cox.

Mayor Bloszinsky stated Engineer Brian Cox already knows a lot about the Town already and he is comfortable going with Brian Cox.

DISCUSSION AND CONSIDERATION OF OLD BUSINESS

1. Final plat approval for the Cove at Kure Beach

Building Inspector Batson stated:

- This is the old trading post property
- P&Z Commission recommends approval for final plat
- The law and ordinances have been followed
- Installed the improvements that have been required

Mayor Bloszinsky asked if Building Inspector Batson has any concerns.

Building Inspector Batson stated he does have one concern for the units 1-9 as they have almost no driveway in front of those units. He was only informed recently that the car ports will now be an enclosed garage. A lot of times the garage is used for storage and he foresees a problem in the future.

Commissioner Whitley asked if they ever came into agreement on a beach access.

Building Inspector Batson responded he hadn't been informed that they had.

MPT Heglar stated there are public beach accesses on both sides.

MOTION- Commissioner Ellen made a motion to approve the final plat for the Cove at Kure Beach

SECOND- Commissioner Oliver

MPT Heglar recused himself from the vote

VOTE- Motion carried 3 to 1 with Mayor Bloszinsky, Commissioner Ellen, and Commissioner Oliver with and Commissioner Whitley against



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DISCUSSION AND CONSIDERATION OF NEW BUSINESS

1. Review and approval of 2019 EOC plan

MPT Heglar stated:

- Received inputs from department heads on the EOC plan
- Inputs were very specific and thanks Fire Chief Kennedy and Police Chief Bowden
- Biggest issues were how we issue out the red stickers before the storm and how to plan for food, gas and water
- We're looking into a grant for the gas tank but will still have agreements with the store till we receive
- Food is currently assigned to each department head but with the new complex need to reevaluate
- Attended exercise on EOC with New Hanover County last week and received a lot of good information
- Upgrading the Public Works Department radio system and buying extra radios
- Minimal changes to the plan but would like to hold off and approve at the June meeting
- If there is a June Storm we would operate under this storm if approved with Council
- Emergency Information sessions scheduled for Monday, June 3rd at 5pm and Saturday, June 8th at 11am

2. Resolution 19-05 Regarding House Bill 971 - Privatizing NC ABC

Mayor Bloszinsky stated:

- Received resolution from the league
- This is regarding getting rid of the ABC stores and allowing private sales of liquor
- Significant impact to the Town as there would be more places to purchase alcohol and a loss of revenue for the Town that is shared with the ABC board
- This resolution is against the bill
- Need to determine if we want to support this resolution keeping the ABC structure in place

Commissioner Ellen doesn't agree with all the assumptions and tried to do research on it but couldn't find much information.

MOTION- MPT Heglar made a motion to approve Resolution 19-05 regarding House Bill 971 – Privatizing NC ABC

SECOND- Commissioner Oliver

VOTE- Unanimous



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3. Carolina Beach/Kure Beach Sewer Authority adoption of rates

MPT Heglar stated:

- Attended the Sewer Authority meeting
- Reviewed the spending for the previous year
- This year the expenses were higher than expected
- Carolina Beach/Kure Beach rates as presented for variable and fixed costs for next fiscal year:
 - Variable Costs: \$03.993 increase per 1,000 gallons
 - Fixed Costs: \$2,117.91 per month increase
 - Capital Recovery: \$200.58 per month increase

MOTION- MPT Heglar made a motion to adopt the Carolina Beach/ Kure Beach Sewer Authority adoption of rates

SECOND- Commissioner Whitley

VOTE- Unanimous

COMMISSIONER ITEMS

MPT Heglar asked Council to please advise on the letter for the hurricane emergency preparation before he sends it out next week. It is very similar from last year.

Commissioner Whitley stated Town Clerk Avery and I attended the final policy meeting for MOTSTU last Tuesday. The plan is available online at the Council of Governments. The final draft is open for public comment and have final meeting at Town Hall on June 24th.

Commissioner Ellen commented thank you to Council for the support, to all staff and the committee on the Dedication. The committee was way under budget and the dedication went smoothly.

MOTION- MPT Heglar made a motion to go into closed session for consultation on a personnel matter with the attorney as per N.C.G.S. 143-318.11(a)(6) at 8:41 p.m.

SECOND- Commissioner Whitley

VOTE- Unanimous

MOTION- Commissioner Ellen made a motion to return into open session at 9:16 p.m.

SECOND- Commissioner Whitley

VOTE- Unanimous



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MOTION- MPT Heglar made a motion to approve directing Town Clerk Avery to enter into contract with a safety assessment professional to do a risk management safety standard and policy analysis of the Town

SECOND- Commissioner Ellen

VOTE- Unanimous


MOTION- Commissioner Ellen made a motion to adjourn the meeting at 9:16 pm

SECOND- MPT Heglar

VOTE- Unanimous

ATTEST:


Nancy Avery, Town Clerk


Craig Bloszinsky, Mayor

NOTE: These are action minutes reflecting items considered and actions taken by Council. These minutes are not a transcript of the meeting. A recording of the meeting is available on the town's website under government>council.



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

SPECIAL USE PERMIT APPLICATION FOR SUNFUN RENTALS, LLC

During its April 9, 2019 meeting, the Kure Beach Planning & Zoning Commission (“PZC”) reviewed the special use permit application submitted by SunFun Rentals, LLC (“Applicant”) for the rental of golf carts from a lot located at 112 Fort Fisher Boulevard South, Kure Beach, NC (hereinafter the “Property”). Having reviewed the application and following Staff’s presentation and remarks from Applicant’s representative Sheila Embler, PZC makes the following findings:

FINDINGS:

1. Applicant is an active domestic limited liability company with its principal office located in Carolina Beach, NC.
2. The Property is owned by Sea Mist, LLC (“Owner”) and is located in the B-1 Business District.
3. Materials submitted for PZC’s review included a site plan dated April 2, 2019, Applicant’s Business Plan for the proposed use, an executed Land Lease Agreement between the Owner and the Applicant, and Owner’s executed Authority for Appointment of Agent appointing Applicant’s principals as its agent for purposes of the application.
4. Applicant did not submit a lighting plan for PZC’s review.
5. Additional information is needed from Applicant with respect to its proposed signage on the Property.
6. The standards for granting a special use permit are set forth in Chapter 19 *Zoning*, Section 19-82 *Special Use Permits* of the Code of the Town of Kure Beach (“Town Code”).
7. Section 19-82(2) a. requires that the proposed special use will not materially endanger public health or safety if located where proposed. Applicant’s plan to contain the Property by natural and rope barriers and to fill the Property’s surface with “traffic grade crushed and run gravel” is consistent with this standard. Additionally, no one spoke in opposition to the

application such that there was not any showing that the proposed use would endanger public health or safety.

8. Section 19-82(2) b. requires that the proposed special use meets all required conditions and specifications. Applicant's statement that the proposed use "will follow ordinances of barriers and signage as well as planning and zoning requirements" is consistent with this standard.

9. Section 19-82(2) c. requires that the proposed special use will not substantially injure the value of adjoining properties. Applicant's statement that the proposed use "will fit the current surroundings" is consistent with this standard. Additionally, no one spoke in opposition to the application such that there was not any showing that the proposed use would injure the value of adjoining properties.

10. Section 19-82(2) d. requires that the location and character of the proposed special use, if approved and developed according to Applicant's site plan, will be harmonious with the area in which it is located and in general conformity with official plans for the area. Applicant's statement that the Property is presently designated for public parking is consistent with this standard.

Based on these findings, PZC makes the following conclusion and recommends the following conditions:

CONCLUSION AND CONDITIONS:

1. The application for the special use permit is consistent with the regulations, principles, and safeguards provided under Chapter 19, Section 82 of the Town Code and approval by the Kure Beach Council ("Council") is recommended subject to the following conditions to assure that the proposed use is harmonious with the area in which it will be located and meets the intent of the town's zoning regulations:

A. Applicant shall designate parking spaces on the Property for the orderly parking of golf carts when they are not in use.

B. Golf carts shall exit the Property by a right-turn only onto S. Fort Fisher Boulevard.

C. The structure to be located on the Property shall be limited to the "C Cabin" illustrated in the Premier Advertising brochure included with the materials submitted for PZC's review.

D. Applicant shall present to Council, prior to its hearing on the application, a clearly described lighting plan appropriate for the Property's location; appropriateness in this instance to be construed as lighting that: is shielded to prevent glare; is directed downward; does not exceed a specified lumens; and does not exceed, at the respective property lines, 0.1 foot-candles adjacent to commercial uses and 0.05 foot-candles adjacent to residential uses.

E. Applicant shall present to Council, prior to its hearing on the application, a clear description of its proposed signage which complies with the sign regulations set forth in Chapter 19 Zoning, Article VI Signs of the Town Code.

F. Applicant shall maintain policies of insurance, including general liability, motor vehicle liability, and workers compensation coverage, sufficient to insure against all liabilities, claims, demands, and other obligations assumed by Applicant under its proposed use of the Property and with the following minimum limits:

General Liability: \$1,000,000.00 per occurrence;
Automotive Liability: \$1,000,000.00; and
Workers Compensation: As required by statute.

Applicant shall deliver to the Town's Building Inspector, prior to commencing its use of the Property, a Certificate of Insurance verifying such coverage and expressly naming thereon the Town as an additional insured under the liability coverages. Applicant shall provide the Building Inspector with at least thirty (30) days' written notice of the cancellation of any required insurance coverage.

G. Applicant shall enter into a written indemnification and hold harmless agreement with the Town for its use of the Property.

This the 7th day of May, 2019.

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



Craig Galbraith, Chairman

Kure Beach Downtown Overlay District Architectural Requirements (Draft 5/8/19)

Building. The following elements of building design shall be incorporated in new construction and renovations as noted.

SECTION XXX Scale

Scale and proportion should reflect local traditions for a small ocean/beach oriented community. They should be oriented to the “village” character of Kure Beach.

(a) ALLOWED:

- 35 feet height maximum from average natural grade to roof; existing contours shall be provided on the plat or site plans as part of the zoning permit application
- Harmony with landscape and surroundings
- Structures using rectangular configurations
- Street fronts having sense of entry
- Use of setbacks and architectural elements (windows, stairs, etc) to break up large masses of buildings
- Pedestrian-oriented scale
- Covered walkways
- Canopies
- Planned Commercial and Planned Residential Developments within district where multiple interconnected buildings may be constructed provided that the principal building comprises no more than 60% of the combined total of the gross foot print of all buildings in a three building development. Each addition to existing buildings may not exceed 60% of existing building footprint.

(b) PROHIBITED:

- Square or rectangular buildings in excess of 50,000 square foot of gross floor area, when constructed on an individual lot(s) and are not a part of a Planned Commercial or Planned Residential Development containing less than three buildings in the zoning district
- Continuous flat facades
- A-frame buildings
- Round buildings
- Geodesic domes
- Any design that represents a “drive-through”, where merchandise or food may be passed directly to customers in their vehicle.

SECTION XXX Roofs

Roofs are a major visible element and shall be compatible with both the building under review, and neighboring buildings, architectural style. Similarities in roof type create a visual continuity in the streetscape and neighborhood. Roof shape, color and texture should be coordinated with the treatment of the buildings perimeter walls. Roofs with more than one plane, and containing dormers, add variety to a building and break-up its size.

(a) ALLOWED:

- Any pitched roof must be 6/12 to 12/12 slope
- Large overhangs (minimum one (1) foot)
- Fascia eight (8) inches minimum and/or exposed rafter tails
- Gable or hip roofs
- Large roof areas should have more than one plane and be broken up with dormers
- Roof pitches over porches and ancillary structures should be in keeping with principal building (minimum 3/12)
- Flat roofs with parapets

Roof equipment specifications:

- Screen rooftop mechanical, electrical, and energy equipment from view of people on street
- Grouping together of utility structures (vents, ducts, etc.) and painted to match adjacent building surface
- Exposed gutters and downspouts painted to match adjacent roof or wall material
- Earth tone colors for roof materials
- Traditional roof materials
- Wood shakes/slate/metal roofs/fiberglass shingles/ concrete tiles
- Same materials on all principal parts of the roof
- Asphalt composition shingles (artificial slate)

(b) PROHIBITED:

- Flat roofs, with exception noted above
- Shed, gambrel, mansard roofs
- Low slopes (under 6/12) for main roof
- Very steep slopes (over 12/12)
- Overhangs less than one (1) foot except for a retail/storefront streetscape building

- Security Bars over windows

SECTION XXX Color

Colors shall blend in well with other properties in the district. Natural stains or paints that reflect the colors of the nature of a beach community should be dominant on large areas such as building facades and elevations. Openings and entryways should be clearly expressed with changes of texture or color. Trim color shall refer to any or all building's trim elements (such as eaves, soffits, overhangs, fascias, windows, sills, gutters). Principal building and trim colors are subject to review, for repainting an existing building. If the color for repainting matches the existing color, then no permit will be required.

PROHIBITED:

- more than three (3) colors of the "Kure Beach color chart" and of like materials (principal building and trim)
- high gloss finishes
- day-glow and fluorescent colors
- bright colors, including pastels that do not harmonize with other

SECTIONS NEEDED

1. *Mixed use*
2. *No residential (except in a mixed use situation on 2nd/3rd floors) when current building is NOT currently residential*
3. *Lighting (shielding, brightness, architectural look)*
4. *Signage (if different than underlying zone, most downtown districts have separate, more strict signage requirement (such as only exterior lit, no menu boards, etc.))*
5. *Type of business allowed (if a COA process in an overlay district allows specific business uses different from the underlying zoning)*

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MEMORANDUM

TO: KURE BEACH PLANNING AND ZONING COMMISSION
FROM: JAMES E. ELDRIDGE, PZC ATTORNEY
DATE: MAY 8, 2019
RE: CERTIFICATE OF APPROPRIATENESS

INTRODUCTION

During the April, 2018 PZC meeting, there was discussion concerning the potential use of a Certificate of Appropriateness ("COA") approach in lieu of a special use permit procedure for controlling development within the potential overlay district for the Town's commercial district. The discussion included references to a COA approach in other jurisdictions and how that approach allowed municipalities to require various exterior design elements; a regulatory approach that municipalities are otherwise prohibited from utilizing under N.C. Gen. Stat. 160A-381(h) which provides as follows:

Any zoning and development regulation ordinance relating to building design elements adopted under this Part, under Part 2 of this Article, or under any recommendation made under G.S. 160A-452(6)c. may not be applied to any structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings....

Thus, the question arose as to how a COA approach could regulate exterior design elements when the zoning statutes prohibit it except under very limited circumstances

DISCUSSION

The COA approach is authorized for the creation and regulation of historic districts and landmarks under Chapter 160A, Part 19, Part 3C. Copies of some of the applicable Part 3C statutes are attached hereto and indicate the following:

- A historic district must be established as part of Chapter 19 by Town Council pursuant to the procedures set forth in the statutes.

- A historic district shall consist of areas which are deemed to be of special significance in terms of their history, prehistory, architecture, and/or culture and to possess integrity of design, setting, materials, feeling, and association.
- Those procedures include an investigation and report describing the “significance of the buildings, structures, features, sites...included in any such proposed district...”
- The State Department of Natural and Cultural Resources shall analyze the report and make recommendations concerning the same.
- Town Council may also submit the report to any local preservation commission for its recommendations.
- On receipt of the agency/commission reports and recommendations, Town Council may proceed with the establishment of the historic district in accordance with the procedures required for amendments to Chapter 19.
- Upon the establishment of a historic district, no exterior portion of any structure nor above-ground utilities nor any type of outdoor advertising sign shall be erected, altered, restored, moved, or demolished until after an application for a COA is approved by the preservation commission (which the Town would need to create).

It is the COA approach applied in historic districts that allows for the regulation of exterior design elements which, interestingly is an exception to G.S. 160A-381(h)'s prohibition for "structures...located in an area designated as a local historic district pursuant to Part 3C of Article 19 of Chapter 160A of the General Statutes...."

CONCLUSION

While a COA approach may be preferred over a special use permit procedure, such an approach can only be utilized in a historic district established under the authority of Chapter 160A, Article 19, Part 3C. The question then becomes whether the proposed overlay district possess the features which would allow it to be designated as an historic district.

§ 160A-400.3. Character of historic district defined.

Historic districts established pursuant to this Part shall consist of areas which are deemed to be of special significance in terms of their history, prehistory, architecture, and/or culture, and to possess integrity of design, setting, materials, feeling, and association. (1989, c. 706, s. 2.)

§ 160A-400.4. Designation of historic districts.

(a) Any municipal governing board may, as part of a zoning or other ordinance enacted or amended pursuant to this Article, designate and from time to time amend one or more historic districts within the area subject to the ordinance. Such ordinance may treat historic districts either as a separate use district classification or as districts which overlay other zoning districts. Where historic districts are designated as separate use districts, the zoning ordinance may include as uses by right or as conditional uses those uses found by the Preservation Commission to have existed during the period sought to be restored or preserved, or to be compatible with the restoration or preservation of the district.

(b) No historic district or districts shall be designated under subsection (a) of this section until:

- (1) An investigation and report describing the significance of the buildings, structures, features, sites or surroundings included in any such proposed district, and a description of the boundaries of such district has been prepared, and
- (2) The Department of Natural and Cultural Resources, acting through the State Historic Preservation Officer or his or her designee, shall have made an analysis of and recommendations concerning such report and description of proposed boundaries. Failure of the department to submit its written analysis and recommendations to the municipal governing board within 30 calendar days after a written request for such analysis has been received by the Department of Natural and Cultural Resources shall relieve the municipality of any responsibility for awaiting such analysis, and said board may at any time thereafter take any necessary action to adopt or amend its zoning ordinance.

(c) The municipal governing board may also, in its discretion, refer the report and proposed boundaries under subsection (b) of this section to any local preservation commission or other interested body for its recommendations prior to taking action to amend the zoning ordinance. With respect to any changes in the boundaries of such district subsequent to its initial establishment, or the creation of additional districts within the jurisdiction, the investigative studies and reports required by subdivision (1) of subsection (b) of this section shall be prepared by the preservation commission, and shall be referred to the local planning agency for its review and comment according to procedures set forth in the zoning ordinance. Changes in the boundaries of an initial district or proposal for additional districts shall also be submitted to the Department of Natural and Cultural Resources in accordance with the provisions of subdivision (2) of subsection (b) of this section.

On receipt of these reports and recommendations, the municipality may proceed in the same manner as would otherwise be required for the adoption or amendment of any appropriate zoning ordinance provisions.

(d) The provisions of G.S. 160A-201 apply to zoning or other ordinances pertaining to historic districts, and the authority under G.S. 160A-201(b) for the ordinance to regulate the location or screening of solar collectors may encompass requiring the use of plantings or other measures to ensure that the use of solar collectors is not incongruous with the special character of the district. (1989, c. 706, s. 2; 2009-553, s. 4; 2015-241, s. 14.30(s).)

§ 160A-400.5. Designation of landmarks; adoption of an ordinance; criteria for designation.

Upon complying with G.S. 160A-400.6, the governing board may adopt and from time to time amend or repeal an ordinance designating one or more historic landmarks. No property shall be recommended for designation as a historic landmark unless it is deemed and found by the preservation commission to be of special significance in terms of its historical, prehistorical, architectural, or cultural importance, and to possess integrity of design, setting, workmanship, materials, feeling and/or association.

The ordinance shall describe each property designated in the ordinance, the name or names of the owner or owners of the property, those elements of the property that are integral to its historical, architectural, or prehistorical value, including the land area of the property so designated, and any other information the governing board deems necessary. For each building, structure, site, area, or object so designated as a historic landmark, the ordinance shall require that the waiting period set forth in this Part be observed prior to its demolition. For each designated landmark, the ordinance may also provide for a suitable sign on the property indicating that the property has been so designated. If the owner consents, the sign shall be placed upon the property. If the owner objects, the sign shall be placed on a nearby public right-of-way. (1989, c. 706, s. 2.)

§ 160A-400.6. Required landmark designation procedures.

As a guide for the identification and evaluation of landmarks, the commission shall undertake, at the earliest possible time and consistent with the resources available to it, an inventory of properties of historical, architectural, prehistorical, and cultural significance within its jurisdiction. Such inventories and any additions or revisions thereof shall be submitted as expeditiously as possible to the Office of Archives and History. No ordinance designating a historic building, structure, site, area or object as a landmark nor any amendment thereto may be adopted, nor may any property be accepted or acquired by a preservation commission or the governing board of a municipality, until all of the following procedural steps have been taken:

- (1) The preservation commission shall (i) prepare and adopt rules of procedure, and (ii) prepare and adopt principles and guidelines, not inconsistent with this Part, for altering, restoring, moving, or demolishing properties designated as landmarks.
- (2) The preservation commission shall make or cause to be made an investigation and report on the historic, architectural, prehistorical, educational or cultural significance of each building, structure, site, area or object proposed for designation or acquisition. Such investigation or report shall be forwarded to the Office of Archives and History, North Carolina Department of Natural and Cultural Resources.
- (3) The Department of Natural and Cultural Resources, acting through the State Historic Preservation Officer shall either upon request of the department or at the initiative of the preservation commission be given an opportunity to review and comment upon the substance and effect of the designation of any landmark pursuant to this Part. Any comments shall be provided in writing. If the Department does not submit its comments or recommendation in connection with any designation within 30 days following receipt by the Department of the investigation and report of the commission, the commission and any city or county governing board shall be relieved of any responsibility to consider such comments.
- (4) The preservation commission and the governing board shall hold a joint public hearing or separate public hearings on the proposed ordinance. Reasonable notice of the time and place thereof shall be given. All meetings of the commission shall be open to the public, in accordance with the North Carolina Open Meetings Law, Chapter 143, Article 33C.
- (5) Following the joint public hearing or separate public hearings, the governing board may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposed ordinance.
- (6) Upon adoption of the ordinance, the owners and occupants of each designated landmark shall be given written notification of such designation insofar as reasonable diligence permits. One copy of the ordinance and all amendments thereto shall be filed by the preservation commission in the office of the register of deeds of the county in which the landmark or landmarks are located. In the case of any landmark property lying within the zoning jurisdiction of a city, a second copy of the ordinance and all amendments thereto shall be kept on file in the office of the city or town clerk and be made available for public inspection at any reasonable time. A third copy of the ordinance and all amendments thereto shall be given to the city or county building inspector. The fact that a building, structure, site, area or object has been designated a landmark shall be clearly indicated on

all tax maps maintained by the county or city for such period as the designation remains in effect.

- (7) Upon the adoption of the landmarks ordinance or any amendment thereto, it shall be the duty of the preservation commission to give notice thereof to the tax supervisor of the county in which the property is located. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the tax supervisor in appraising it for tax purposes. (1989, c. 706, s. 2; 2002-159, s. 35(m); 2012-18, s. 1.24; 2015-241, s. 14.30(s).)

§ 160A-400.9. Certificate of appropriateness required.

(a) From and after the designation of a landmark or a historic district, no exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features), nor above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved, or demolished on such landmark or within such district until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the preservation commission. The municipality shall require such a certificate to be issued by the commission prior to the issuance of a building permit or other permit granted for the purposes of constructing, altering, moving, or demolishing structures, which certificate may be issued subject to reasonable conditions necessary to carry out the purposes of this Part. A certificate of appropriateness shall be required whether or not a building or other permit is required.

For purposes of this Part, "exterior features" shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs, and other appurtenant fixtures. In the case of outdoor advertising signs, "exterior features" shall be construed to mean the style, material, size, and location of all such signs. Such "exterior features" may, in the discretion of the local governing board, include historic signs, color, and significant landscape, archaeological, and natural features of the area.

Except as provided in (b) below, the commission shall have no jurisdiction over interior arrangement and shall take no action under this section except to prevent the construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs, or other significant features in the district which would be incongruous with the special character of the landmark or district.

(b) Notwithstanding subsection (a) of this section, jurisdiction of the commission over interior spaces shall be limited to specific interior features of architectural, artistic or historical significance in publicly owned landmarks; and of privately owned historic landmarks for which consent for interior review has been given by the owner. Said consent of an owner for interior review shall bind future owners and/or successors in title, provided such consent has been filed in the office of the register of deeds of the county in which the property is located and indexed according to the name of the owner of the property in the grantee and grantor indexes. The landmark designation shall specify the interior features to be reviewed and the specific nature of the commission's jurisdiction over the interior.

(c) Prior to any action to enforce a landmark or historic district ordinance, the commission shall (i) prepare and adopt rules of procedure, and (ii) prepare and adopt principles and guidelines not inconsistent with this Part for new construction, alterations, additions, moving and demolition. The ordinance may provide, subject to prior adoption by the preservation commission of detailed standards, for the review and approval by an administrative official of applications for a certificate of appropriateness or of minor works as defined by ordinance; provided, however, that no application for a certificate of appropriateness may be denied without formal action by the preservation commission.

Prior to issuance or denial of a certificate of appropriateness the commission shall take such steps as may be reasonably required in the ordinance and/or rules of procedure to inform the owners of any property likely to be materially affected by the application, and shall give the applicant and such owners an opportunity to be heard. In cases where the commission deems it necessary, it may hold a public hearing concerning the application. All meetings of the commission shall be open to the public, in accordance with the North Carolina Open Meetings Law, Chapter 143, Article 33C.

(d) All applications for certificates of appropriateness shall be reviewed and acted upon within a reasonable time, not to exceed 180 days from the date the application for a certificate of appropriateness is filed, as defined by the ordinance or the commission's rules of procedure. As part of its review procedure, the commission may view the premises and seek the advice of the Division of Archives and History or such other expert advice as it may deem necessary under the circumstances.

(e) An appeal may be taken to the Board of Adjustment from the commission's action in granting or denying any certificate, which appeals (i) may be taken by any aggrieved party, (ii) shall be taken within times prescribed by the preservation commission by general rule, and (iii) shall be in the nature of certiorari. Any appeal from the Board of Adjustment's decision in any such case shall be heard by the superior court of the county in which the municipality is located.

(f) All of the provisions of this Part are hereby made applicable to construction, alteration, moving and demolition by the State of North Carolina, its political subdivisions, agencies and instrumentalities, provided however they shall not apply to interiors of buildings or structures owned by the State of North Carolina. The State and its agencies shall have a right of appeal to the North Carolina Historical Commission or any successor agency assuming its responsibilities under G.S. 121-12(a) from any decision of a local preservation commission. The commission shall render its decision within 30 days from the date that the notice of appeal by the State is received by it. The current edition of the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings shall be the sole principles and guidelines used in reviewing applications of the State for certificates of appropriateness. The decision of the commission shall be final and binding upon both the State and the preservation commission. (1989, c. 706, s. 2.)