



TOWN OF KILL DEVIL HILLS

Land Where Flight Began

MEMORANDUM

January 22, 2020

TO: Mayor and Board of Commissioners

FROM: Debora P. Díaz, Town Manager

REF: New Business

1. Board of Commissioners/Planning Board joint worksession on large single-family dwellings/event homes (Attached NB-1)

At its November 13, 2019, meeting, the Board of Commissioners agreed that a joint BOC/Planning Board worksession on the large single-family dwelling/event homes could be beneficial. This will be a general, open forum to hear and discuss Board and public ideas and concepts.

The Board has asked Staff to provide the following:

- A. municipal ordinances on large single-family dwellings from the following local governments:
 - 1. The Town of Nags Head
 - 2. The Town of Southern Shores
- B. Kill Devil Hills' ordinance on non-conformities

Staff will answer any questions from the Board and provide additional information, as requested.

Director of
Planning and Inspections
MEREDITH GUNS

Building Inspector
MARTY SHAW
CHARLES THUMAN

Code Enforcement Officer
JORDAN BLYTHE



THE TOWN OF KILL DEVIL HILLS
NORTH CAROLINA

Assistant Director of
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CAMERON RAY

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DONNA ELLIOTT

PLANNING DEPARTMENT

January 22, 2020

Memorandum

To: Mayor and Board of Commissioners

From: Meredith Guns, Planning Director *MBG*

Subject: Planning Board/Board of Commissioners Joint Work Session – Large Single Dwellings

At the December 9, 2019 meeting, the Board of Commissioners set a joint work session with the Planning Board to discuss large single family dwellings. The Board requested the following information for the meeting:

- Regulations from neighboring municipalities regarding size of single family dwellings
 - Attached are the Town of Nags Head and the Town of Southern Shores ordinances regarding size of single family dwellings.
- Nonconformities – How will nonconformities be addressed if there are changes to current regulations.
 - Attached is the Town's Nonconformity Ordinance. Which outlines how zoning nonconformities are regulated.

Staff will be available to answer any additional questions at the work session.

ATTACHMENT NB-1

Dry well means a structure or series of structures located to collect and discharge stormwater through a subterranean chamber which allows collected water to dissipate and infiltrate into the ground.

Dwelling, accessory means a secondary dwelling unit established in conjunction with, and clearly subordinate to, a principal dwelling unit, whether part of the same structure as the principal dwelling unit or as a detached structure on the same lot.

Dwelling, duplex means any dwelling place designed for, or occupied by, two families, each of which has direct access to the outside.

Dwelling, large residential means a single-family dwelling or two-family dwelling (duplex) that has 3,500 or more square feet of enclosed habitable living space.

Dwelling, multifamily means a building or portion thereof used or designed as a residence for three or more families living independently of each other and with each independent unit containing its own kitchen. Multifamily dwelling shall include a townhouse and any similar building, irrespective of the form of legal title.

Dwelling, single-family means a detached building designed for or occupied exclusively by one family.

Dwelling unit means one room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking and sleeping facilities for a single-family.

E

Easement means a grant by the property owner for use, by the public, a corporation or person, of a strip of land for specified purposes.

Easement, access means an easement created for the purpose of providing vehicular or pedestrian access to property.

Earth station - see Dish Antenna.

Educational facility, pre-school means a facility for the organized instruction of children not yet attending primary or secondary school.

Electric vehicle means any vehicle that operates, either partially or exclusively, on electrical energy from the grid, or an off-board source, that is stored on-board for energy purposes. Electric vehicle includes: (1) a battery powered electric vehicle; and (2) a plug-in hybrid electric vehicle.

Electric vehicle charging station means a public or private parking space located together with a battery charging station which permits the transfer of electric energy (by conductive or inductive means) to a battery or other storage device in an electric vehicle. An electric vehicle charging station is permitted as an accessory use to any principal use.

SECTION 7.3 DWELLING, ACCESSORY.

RESERVED

SECTION 7.4 DWELLING, LARGE RESIDENTIAL.

Large residential dwellings are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to the following provisions:

7.4.1. Intent.

The purpose of establishing this section is to set forth a comprehensive set of regulations designed to promote and encourage the unique and historical elements of residential architecture held to be valued as an integral part of the Town image, to ensure that future residential development is compatible with its natural and developed environments, and to afford the highest level of protection for both permanent residents and seasonal visitors occupying these structures in the furtherance of public safety and welfare.

7.4.2. Exceptions of Applicability.

All existing large residential dwelling uses which do not meet the requirements of this section shall be regulated in accordance with Article 5, Nonconformities.

7.4.3. Large Residential Dwellings.

As defined in Appendix A Definitions, large residential dwellings shall be subject to the requirements set forth in subsections 7.4.4 through 7.4.7 of this section. Large residential dwellings located in an area designated as a historic district on the National Register of Historic Places shall comply with the provisions of the Nags Head Residential Design Guidelines.

7.4.4. Dimensional Requirements.

7.4.4.1. The minimum lot area for large residential dwellings shall be 16,000 square feet. The total enclosed habitable living space for large residential dwellings is 5,000 square feet, except where the large residential dwelling is located in the SED-80 zoning district on a lot which meets the minimum lot area requirements for that district.

7.4.4.2. Enclosed habitable living space for large residential dwellings shall be calculated to also include any enclosed habitable space that may be present in any accessory structure that is located on the same lot as the principal structure.

7.4.4.3. For large residential dwellings, the minimum width of the side yard shall be fourteen (14) feet. For property owners that elect to follow the Nags Head Residential Design Guidelines (see Appendix B), the minimum width of the side yard may be determined using the dimensional requirements contained within Article 8 District Development Standards applicable to the zoning district in which the dwelling is proposed.

7.4.4.4. The maximum height for large residential dwellings shall be thirty-five (35) feet. For property owners that elect to following the Nags Head Residential Design Guidelines (see

ARTICLE 7. SUPPLEMENTAL REGULATIONS

Appendix B); and, when the proposed large residential dwelling utilizes an eight-twelfths roof pitch as specified in the Town of Nags Head Residential Design Guidelines, the maximum height for a large residential dwelling may be increased to forty-two (42) feet.

7.4.4.5. Within the SRO Soundside Residential Overlay District, large residential dwellings shall not exceed an enclosed habitable living space of 4,200 square feet, and the minimum lot area requirement for the permitting of large residential dwellings shall be 24,000 square feet.

7.4.5. Open Space Preservation/Landscaping Requirements.

All large residential dwellings shall comply with the requirements of one of the following subsections:

7.4.5.1. The preservation of a minimum of ten percent of the lot's total area with existing natural vegetation and/or dune elevations. Areas designated for the preservation of existing vegetation shall contain significant examples of native vegetation and be identified and maintained in accordance with Article 10, Part I, Buffering and Vegetation Preservation General Requirements and Section 10.93, Landscaping, Buffering, and Vegetation Requirements of this UDO.

7.4.5.2. The planting of a minimum of 15 percent of the lot's total area. At minimum 50 percent of the required landscaping shall consist of locally adapted live evergreen tree species that are a minimum height of three feet and one inch in diameter measured at one-half-foot above grade when planted. The remainder of the landscaping may be live forbs and shrubs measuring at least 1-1/2 feet when planted. For properties east of NC 12 and SR 1243, evergreen shrubs shall be substituted for the tree requirement according to the specifications described above.

The above landscaping requirements may be altered due to unique and unusual physical conditions or characteristics of the property, including the reduction of landscaping requirements for oceanfront properties and other lots containing significant dune features that will be preserved in equal proportion.

The property owner shall be responsible for maintaining the landscaped areas required by this section, including the replacement of dead and missing vegetation, accordance with Section 10.5, Maintenance and Replacement, of this UDO.

7.4.6. Sewage Disposal Permitting Requirements.

The maximum permitted wastewater capacity for large residential dwellings shall not exceed 1,080 gallons per day.

7.4.7. Parking.

Parking for all large residential dwellings shall be in conformance with the requirements of Section 10.12, Parking Lot Requirements for Single-Family and Two-Family (Duplex) Dwelling Units, applicable to single-family dwellings and two-family dwellings (duplexes).

SECTION 6.6 TABLE OF USES AND ACTIVITIES.

P - Permitted Use C - Conditional Use S - Supplemental Regulations

Blank- Not allowed in that district

Use Category/Class	Use Type	Residential Districts				Commercial Districts				Special Districts				Overlay Districts			Supplemental Regulations
		R-1	R-2	R-3	CR	C-1*	C-2	C-3	C-4	SPD-20	SED-80	SPD-C*	O&S	CO	HO	SRO	
1 Residential	Cluster Housing		PS														Section 7.1
1 Residential	Cottage Courts				CS	CS	CS										Section 7.2
1 Residential	Dwelling, Accessory																Section 7.3
1 Residential	Dwelling, Large Residential	PS	PS	PS	PS		PS			PS	PS		PS			PS	Section 7.4
1 Residential	Dwelling, Multi-Family				CS	CS	CS										Section 7.5
1 Residential	Dwelling, Single-Family (detached)	P	P	P	P	P	P		P	P	P		P			P	
1 Residential	Dwelling, Two-Family (duplex)		P	P	P	P	P		P								
1 Residential	Granny Pods/Temporary Health Care Structures	PS	PS	PS	PS	PS	PS		PS	PS	PS						Section 7.6
1 Residential	Home Occupation - Class 1	PS	PS	PS	PS	PS	PS		PS	PS							Section 7.7
1 Residential	Home Occupation - Class 2	CS	CS	CS		CS	CS			CS							Section 7.7
1 Residential	Home Occupation - Class 3				CS	CS	CS		CS								Section 7.7
1 Residential	Short-term rental	P	P	P	P	P	P		P	P	P	P	PS	P	P		
1 Residential	Townhouse						CS			CS							Section 7.5
1.1 Residential - Group	Adult Care Home (over six residents)		P	P													
1.1 Residential - Group	Bed and Breakfast				C	C	C		C								
1.1 Residential - Group	Boarding Houses	CS	CS	CS	CS	CS	CS		CS								Section 7.8
1.1 Residential - Group	Child Care Facility, Family Child Care Home		PS	PS													Section 7.9
1.1 Residential - Group	Dormitory					CS	CS					CS					Section 7.10
1.1 Residential - Group	Family Care Homes/Halfway Homes	PS	PS	PS	PS	PS	PS		PS	PS	PS						Section 7.11
1.1 Residential - Group	Family Foster Home	P	P	P	P	P	P		P	P	P						
1.1 Residential - Group	Hotels					CS	CS								CS		Section 7.12
1.1 Residential - Group	Multi-Unit Assisted Housing with Services		P	P													
2 Retail	Art Gallery				P	P	P		P								
2 Retail	Art Gallery - Owner Occupied				P	P	P		P								
2 Retail	Artisan's Workshop (3,000 sq. ft. or less)				PS	PS	PS		PS								Section 7.13
2 Retail	Artisan's Workshop (exceeding 3,000 square feet)				CS	CS	CS		CS								Section 7.13
2 Retail	Auction House						PS										Section 7.14
2 Retail	Beach Recreation Equipment Rentals/Sales				P	P	P										
2 Retail	Bicycle Shop (repair, retail, rental)					P	P		P								
2 Retail	Convenience Store					P	P										
2 Retail	Firearms Sales and Service						P										
2 Retail	Food/Grocery Store				P	P	P										
2 Retail	Furniture Store						P										
2 Retail	General Retail, including clothing, gifts, candy, toys, shoes, jewelry, notions, beach equipment, bakery, antiques, hobby goods, magazines/comics, crafts, dry goods, gifts, musical instruments, bookstores, sporting goods (and the incidental manufacturing, repair, or service of goods on the premises)					P	P	P		P							
2 Retail	Greenhouse/Plant Nursery						P	P	P								
2 Retail	Hardware Store						P	P									
2 Retail	Pet Shop/Dog Grooming						PS	PS		PS							Section 7.15
2 Retail	Pharmacy						P	P									
2 Retail	Production/Repair/Sales Eyeglasses, Hearing Aids, Prosthetics						P	P	P								
3 Service	Automobile Repair							CS									Section 7.16
3 Service	Bail Bonds							P									
3 Service	Banking Institution						P	P									
3 Service	Battery Charging/Exchange Station						PS	PS	PS								Section 7.17
3 Service	Broadcasting Studios							P									

Town of Southern Shores

Sec. 36-202. - RS-1 single-family residential district.

- (a) *Intent*. The RS-1 district is established to provide for the low-density development of single-family detached dwellings in an environment which preserves sand dunes, coastal forests, wetlands, and other unique natural features of the coastal area. The district is intended to promote stable, permanent neighborhoods characterized by low vehicular traffic flows, abundant open space, and low impact of development on the natural environment and adjacent land uses. In order to meet this intent, the density of population in the district is managed by establishment of minimum lot sizes, building setback and height limits, parking regulations and maximum occupancy limits for single-family residences used as vacation cottages.
- (b) *Permitted uses*. The following uses shall be permitted by right:
- (1) Detached single-family dwelling and vacation cottages provided that such residential structure shall not be: (i) advertised to accommodate, designed for, constructed for or actually occupied by more than 14 overnight occupants when used as a vacation cottage; or (ii) have a maximum septic capacity sufficient to serve more than 14 overnight occupants.
 - (2) Customary accessory buildings and structures including, but not limited to, swimming pools, tennis courts, and garages, provided no dwelling unit is located in the accessory structure. Accessory beach access walks, ramps, and steps shall not exceed four feet in width. Accessory ocean dune platforms shall not exceed 200 square feet.
 - (3) Home occupations and home based businesses as regulated in article VIII of this chapter.
 - (4) Town-owned or leased facilities.
 - (5) Piers and docks, only when accessory to a building for which a building permit has been obtained.
 - a. Piers and docks must be permitted by all applicable local, state, and federal agencies having jurisdiction.
 - b. The activity associated with the pier or dock must be permitted by the zoning district where the pier or dock is anchored.
 - c. No such permitted dock or pier shall extend into adjacent waters more than 75 feet from an estuarine bulkhead, mean high waterline, or a line connecting the outermost limits of the coastal wetlands on either side of the proposed structure, whichever is nearest the channel.
 - d. Only one pier or dock is permitted per building site.
 - (6) Estuarine bulkheads must be permitted by all applicable local, state, and federal agencies having jurisdiction.
 - (7) Community beach access including ocean dune platforms, and associated seating areas, walks, ramps and stairs. Such community beach access may be up to six feet in width and must be permitted by all applicable local, state, and federal agencies having jurisdiction.
 - (8) Collocations and eligible facilities requests in compliance with section 36-175(c).
- (c) *Conditional uses permitted*. The following uses are permitted, subject to the requirements of this district and such additional regulations and requirements as may be imposed by the town council, as provided in article X of this chapter:
- (1) Community recreation facilities, including boat launching areas, tennis courts, community centers, libraries, picnic areas, bathing beaches, and concessions integral thereto, provided that there is no open commercial activity, and no sign other than a directional sign is allowed.
 - (2) Fire stations.
 - (3) Governmental emergency medical evacuation facilities.

- (4) Child day care, small home.
 - (5) Swimming lessons, subject to all applicable state and local regulations, training, experience and licensing requirements for swimming pools, swimming lessons, lifeguards and swimming instructors shall be met.
 - a. No swimming lesson shall be conducted earlier than 8:00 a.m. nor later than 6:00 p.m.
 - b. Any need for additional parking generated by the conduct of swimming lessons shall be met by off-street parking.
 - (6) Wireless telecommunications sites in compliance with section 36-175.
 - (7) Wind generation facility, in compliance with the requirements of section 36-176.
- (d) *Dimensional requirements.*
- (1) Minimum lot size: 20,000 square feet.
 - (2) Minimum lot width: 100 feet (measured at the building setback line).
 - (3) Minimum front yard (setback): 25 feet.
 - (4) Minimum side yard (setback).
 - a. Minimum side yard setback shall be 15 feet;
 - b. An additional five-foot side yard adjacent to the street is required for a corner lot;
 - c. Minimum side yard setback shall be 15 feet for swimming pools.
 - (5) Minimum rear yard (setback): 25 feet.
 - (6) Maximum allowable lot coverage.
 - a. Maximum allowable lot coverage shall be 30 percent, except for town-owned facilities and fire stations;
 - b. Maximum allowable lot coverage shall be 85 percent for town-owned facilities and fire stations.
 - c. Gravel walkways shall not contribute to lot coverage.
 - d. Open-slatted decks that allow water to penetrate through to pervious material, not exceeding a total of 25 percent of the total footprint area of the attached single-family dwelling, shall not contribute to lot coverage.
 - e. Those allowances and/or exemptions listed in subsection d. of this paragraph (6) shall be available only to an applicant for a building/zoning permit for a single-family dwelling or attached open-slatted deck over pervious material, upon presentation of a survey with all applicable requirements including plan certification, for a lot disturbance and stormwater management permit as described in subsection 36-171(3) of the Town Code of Ordinances.

In the case of an oceanfront lot, only that area landward of the first line of stable natural vegetation (as defined by CAMA) shall be used for calculating lot coverage.

- (7) Height.
 - a. For properties that are not in a flood zone (X flood zone), maximum building height shall be 35 feet measured from the average of the corners using original grade. In those cases where the average grade of the corners is higher than seven feet mean sea level (msl), the use of fill or redistribution of fill shall not exceed the average elevation. In those cases where the average grade of the corners is lower than seven feet mean sea level (msl), the use of fill or redistribution of fill may be permitted up to seven feet above mean sea level (msl) which is then used as the starting point for calculating the elevation.

- b. For properties that are in an AE flood zone, maximum building height shall be 35 feet measured from the corners of original grade. The use of fill or redistribution of fill shall not exceed the average elevation. Redistribution of fill may be permitted up to seven feet above mean sea level (msl) which is then used for calculating the elevation.
 - c. For properties that are in a VE flood zone, maximum building height shall be 35 feet measured from the average of the corners of original grade (fill is regulated by FEMA).
- (8) Minimum living space: 1,000 square feet of enclosed living space.
 - (9) Maximum size of single-family dwelling: Single-family dwellings shall not exceed 6,000 square feet of enclosed living space.

(Code 1988, § 11-7.01; Ord. No. 01-10-016, pt. II, 10-2-2001; Ord. No. 02-06-019, pt. I, 6-25-2002; Ord. No. 05-08-02, art. V, 11-1-2005; Ord. No. 06-05-01, art. III, § 1, 6-6-2006; Ord. No. 2007-05-01, art. IV, 6-5-2007; Ord. No. 2009-08-01, pt. I, 1-5-2010; Ord. No. 2011-04-01, art. III, pt. III, 4-5-2011; Ord. No. 2014-04-02, art. III, pt. I, 4-1-2014; Ord. No. 2016-01-04, art. III, pt. 2, 1-22-2016; Ord. No. 2017-09-01, art. III, pt. I, 9-5-2017; Ord. No. 2017-12-02, art. III, pt. II, 12-5-2017; Ord. No. 2018-09-01, art. III, pt. I, 9-5-2018; Ord. No. 2019-05-02, art. III, pt. 2., 5-7-2019)

Kill Devil Hills Town Code

§ 153.053 ZONING NONCONFORMITY.

Where, on the effective date of this chapter, there is a zoning nonconformity, such nonconformity may be continued so long as it remains lawful, subject to the following provisions:

(A) Single-family and duplex nonconforming structures shall be subject to the following provisions:

(1) Any zoning nonconformity where the cost of the addition, structural alteration, reconstruction/repair or remodel exceeds 50% of the structural valuation the site shall be brought into compliance with the regulations of this chapter. Multiple projects/approvals cannot cumulatively exceed 50% of the structural valuation within 365 days.

(2) Any zoning nonconformity may be modified by an addition, structural alteration, reconstruction/repair or remodel in a manner which does not increase its nonconformity where the cost of that addition, structural alteration, reconstruction/repair or remodel is less than 50% of structural valuation and subject to the following provisions.

(a) Increases to the gross floor area of the principal structure and/or addition of a bedroom(s), with the exception of unheated storage areas, shall require all parking and driveways be brought into compliance with this chapter.

(B) Commercial, industrial and institutional zoning nonconformities shall be subject to the following provisions:

(1) Any zoning nonconformity where the addition to the gross floor area exceeds 50% of the gross floor area, the site shall be brought into compliance with the regulations of this chapter. Multiple projects/approvals cannot cumulatively exceed 50% of the gross floor area within 365 days.

(2) Any zoning nonconformity may be modified by an addition, structural alteration, reconstruction/repair, remodel or change of use subject to the following provisions:

(a) Any repair/reconstruction or change of use shall be permitted provided that the repair/reconstruction or change of use does not increase any nonconformity.

(b) Remodels interior and/or exterior and structural alteration shall be permitted provided that the remodel does not increase any nonconformity and conforms to all applicable regulations of the Town Code.

(c) Additions less than 20% of the gross floor area or 1,500 square feet, whichever is less, and site feature additions less than 50% of the footprint of existing site features shall be permitted provided that the addition does not increase any nonconformity and conforms to all applicable regulations of the Town Code.

(d) Using the nonconformity worksheet (hereby "the worksheet") and associated rules located in [Appendix F](#), the following improvements will be required to be within the

proposed corresponding points from total ordinance required points for the site and have a minimum 2 point differential between existing and proposed points as follows:

1. Additions:

A. Principal building:

i. Additions of 20%–35% of the gross floor area or greater than 1,500 square feet, shall have a proposed point value within 10 points from total ordinance required points as calculated on the worksheet;

ii. Additions of 36%–50% of the gross floor area or greater than 1,500 square feet, shall have a proposed point value within 5 points from total ordinance required points as calculated on the worksheet.

iii. Additions greater than 50% of the gross floor area or greater than 1,500 square feet, shall comply with the zoning ordinance.

B. Site features greater than 50% shall have a proposed point value within 20 points from total ordinance required points as calculated on the worksheet.

(3) Nonconforming sunrooms constructed prior to November 18, 1991 may be reconstructed/repared with another type of construction provided that the resultant footprint is equal to or less than the footprint of the existing sunroom.

(C) Historic structures.

(1) Commercial structures designated Local Historic Landmarks in accordance with § [31.42](#) and commercial structures built prior to the adoption of zoning ordinance, November 30, 1953 shall comply with the provisions:

(a) Any historic structure zoning nonconformity where the cost of the addition, structural alteration, reconstruction/repair or remodel exceeds 50% of the structural valuation the site shall be brought into compliance with the regulations of this chapter. Multiple projects/approvals cannot cumulatively exceed 50% of the structural valuation within 365 days.

(b) Any historic structure zoning nonconformity may be modified by an addition, structural alteration, reconstruction/repair or remodel in a manner which does not increase its nonconformity where the cost of that addition, structural alteration, reconstruction/repair or remodel is less than 50% of structural valuation and subject to the following provision:

1. All applicable regulations of the Town Code shall be met for the addition to the structure.

(D) In the event a natural disaster, casualty loss or accidental occurrence leads to extensive damage to a structure that is nonconforming in any respect or a structure that is used in a nonconforming manner, that structure or use may be repaired or reconstructed to 100% of its status as of the date of enactment of this chapter. In a State of Emergency declared by the Mayor, see § [153.359](#)(C). The following conditions shall apply:

(1) The total amount of space devoted to a nonconforming use may not be restricted;

(2) The reconstructed building may not be more nonconforming with respect to dimensional restrictions, such as yard requirements, height limitations, lot coverage or density requirements, and such dimensional nonconformities must be less nonconforming;

(3) Reconstruction work may be done only after issuance of a permit by the Board of Commissioners. The Board of Commissioners shall issue the permit if it finds that the work will be done in accordance with this section and that all reasonable efforts have been made to reduce nonconforming items using the nonconformity worksheet as a guide ([Appendix F](#) of this chapter).

(E) Any such nonconforming structure located on a lot adjacent to the Atlantic Ocean or sound waters may be moved on the same lot, provided that such movement does not increase the nonconformity.

(Ord. 91-08, passed 11-18-91; Am. Ord. 93-11, passed 9-13-93; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 04-15, passed 9-13-04; Am. Ord. 05-15, passed 9-12-05; Am. Ord. 07-18, passed 10-24-07; Am. Ord. 08-03, passed 1-14-08; Am. Ord. 08-06, passed 2-11-08; Am. Ord. 08-08, passed 2-27-08; Am. Ord. 09-01, passed 1-28-09; Am. Ord. 10-20, passed 11-10-10; Am. Ord. 11-06, passed 4-11-11; Am. Ord. 14-07, passed 6-17-14)