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NORTH CAROLINA**

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May 10, 2021

Memorandum

To: Debbie Diaz, Town Manager

From: Meredith Guns, Planning Director *MBG*

Subject: Proposed Amendments to Town Code – Revision to Town Code for Compliance With NC General Statute 160D Local Planning and Development Regulations

In 2019, the North Carolina General Assembly adopted Part II of S.L.2019-111 which completely reorganizes the statutes related to Planning and Development regulations. The new 160D of the North Carolina General Assembly consolidates current city and county enabling statutes currently located in 153A (county regulations) and 160A (city regulations) into a single unified chapter. Chapter 160D applies to land use regulations, other statutes for Cities and Towns is still located in NCGS160A.

Chapter 160D reorganizes Planning and Development regulations and clarifies several aspects of the previous chapters. All Towns and Counties are required to update and adopt local development regulations no later than July 1, 2021 to meet the new terminology and procedures outlined in 160D.

Attached this memorandum are:

- A Summary of changes to the Kill Devil Hills Town Code to meet the requirements of NCGS 160D
- Excerpts of changes made to the following chapters of the Town Code
 - Chapter 10 - General Provisions
 - Chapter 30 - Board of Commissioners
 - Chapter 31 - Boards and Committees
 - Chapter 150 - Buildings
 - Chapter 152 - Subdivisions
 - Chapter 153 - Zoning

On April 20, 2021 the Planning Board reviewed the proposed amendments to Chapter 150, Chapter 152 and Chapter 153, to meet the requirements set forth in North Carolina General Statute 160D – Local Planning and Development Regulations and forwarded the amendments to the Board of Commissioners with a favorable recommendation.

Staff recommends setting the required public hearing for June 14, 2021.

Summary of Changes to Kill Devil Hills Town Code to meet the new NCGS 160D

Chapter 10 General Provisions

- 10.19 Appeal of Civil Citation
 - Modify to exclude Land Use Section of the Code because appeals to the Land Use Section of the Code are heard by the Board of Adjustments.
- 10.99 General Penalty
 - Add 10.99(D) to outline the violation notification process based on General Statutes language.

Chapter 30 Board of Commissioners

- 30.05 – reference to Conflict of Interest Statement (required)

Chapter 31 Board and Commissions

- Generally – Changed references from 160A to 160D including
 - 31.04(A) – Change Reference from 160A-387 to 160D-604
 - 31.04(E) – 1560A-387 to 160D-301
- Planning Board
 - 31.04(D) Add Section to Establish Planning Board role in Special Use permit review – Quasi-judicial procedures.
 - 31.03 Add an Oath of Office requirement
 - 31.04 Add Conflict of Interest statement
- Community Appearance Commission
 - 31.20 Reference addition 160D-304 authorizing establishment of Commission
 - 31.25 Add oath of Office
 - 31.26 Add Conflict of Interest statement
- Historic Landmark Commission
 - Reference Correction - 160A, Article 19, Part 3 changed to 160D-303 authorizing formation of the commission
 - 31.42(C)(4) and (5) Designation Procedure Clarifying legislative procedure for ordinance adoption and Notification procedures.
 - 31.43(E)(1) Certificate of Appropriateness – Designating Certificates of Appropriateness as Quasi-Judicial procedures
 - Add 31.49 Oath of Office
 - Add 31.50 Conflict of Interest
- Board of Adjustment
 - 31.60 Reference correction 160A-388 to 160D-302 authorizing establishment of the Board of Adjustments
 - Add 31.67 Oath of Office
 - Add 31.68 Conflict of Interest Statement

Chapter 150 Building Regulations

- 150.01 Compliance with Zoning Regulations – Add Chapter 151 Flood Damage Prevention Ordinance to conformity requirements
- Duties and Responsibility
 - Add section 150.06 for Duties and Responsibility of the Code Enforcement Officer based on 160D -1104. Re-number sections accordingly
- Building Inspectors
 - 150.05 reference correction 160A-420 and 160A-424 to 160D-1113 and 160D-1117
 - Add 150.05(C) Conflict of Interest Statement
- Building Code
 - 150.07(B)(2) Penalties reference correction 160A-389 to 160D-1119
 - Add (3) for enforcement section based on 160D regulations
 - Add 150.30 Inspections – Add inspection authorization language based on 160D-1113

Chapter 152 Subdivision

- 152.02 – reference Correction – Change GS Ch. 153A, Art. 18, part 2.C to GS 160D, Article 8
- 152.17 Subdivision Committee – Eliminate this section. Outdated
- 152.28 Final Plat
 - 152.28(B)(2) Delete existing phasing/vesting language to the revised Site Specific Vesting to meet Chapter 160D. Renumbering following accordingly
 - 152.28(D)(2) Add Adoption and Notification for subdivisions. This will be by reference to the added section in Chapter 153 Zoning
 - 152.28(D)(5) Add section for appeals of subdivision decisions to reference the process outlined in 160D-1403.
- 152.58 Reference correction from G.S. 160A-376 to 160D-807
- 152.59 Reference correction from GS 160A-376 to 160D-802

Chapter 153 Zoning

- Generally - All reference to Conditional Use have been removed/changed to Special Use as required by 160D.
- 153.001 Authority of Purpose – reference correction 160A-301 to 160D-301
- 153.002 Definition
 - Development - Add subdivision as a form a development to meet the 160D definition of development.
 - Site Plan – reference correction from 160A-385 to GS 160D-108
- 153.020 Zones Created – corrected existing zoning districts to include Government and Institution Public and Private Ownership
- 153.021 Zoning map
 - Added language regarding methods of zoning map retention
- 153.038 Amendments
 - 153.038(A) Outline procedure for ordinance amendment. This is current practice being put in ordinance form in accordance with 160D.

- 153.038(B) Add section for require Consistency statements from Planning Board and Board of Commissioners. (already in practice)
 - Renumber accordingly in section
- 153.117(B) Residential Low – Overhead Transmission add NCGS authorization 160D-932.
- Board of Adjustments
 - 153.321(B) Duties and responsibilities – Clarify appeals for administrative decisions to mirror 160D. Syntax change not procedural and add procedure and process for appeals to comply with 160D-405 and 406.
 - Appeals 153.322
 - 153.322 (A)(2) add subdivision to the appeal process that is referenced in 152 Subdivisions
 - 153.322 (A)(2)(a) reference correction 160A-393(d) to 160D-1402(c)
 - 153.322 (A)(2)(e) clarify that in event of appeal of violation there is a stay on enforcement and fines.
 - 153.322 (A)(2)(f) defining appeals as a quasi-judicial hearing
 - 153.322 (A)(2)(g) Modifying the hearing procedure by reference to new section of 153.363 to meet requirements of 160D
 - 153.322 (A)(2)(j) reference correction 160A-400.9 to 160D-1402 and 160A-393(k) to 160D-1402
 - 153.322(3) Add procedure for distributing materials for review
 - 153.322(4) Add voting requirements and renumber accordingly
 - 153.322(6) Add procedure for Judicial Challenges
 - Variances
 - 153.323(A)(4) clarify the notice regulations by reference to new section of 153.363 to meet requirements of 160D.
 - 153.323(A)(5) add voting requirements
 - Action of Board of Adjustments
 - 153.324(B) add Conflict of Interest Statement
 - 153.324(E) reference correction from 160A-393(d) to 160D-406(g)
 - Granting of Variances
 - 153.325(C) reference correction 160A-393 to 160D-406(k)
- Site Plan Requirements
 - 153.355(C) Change “staff” to “administrative” for consistency
- Vesting of Rights
 - 153.360(A) modify vest period to one year for administrative review and Board of Commissioners approved plans. To be consistent with 160D-208 Vesting
 - 153.360(A) reference corrections 160A-385(b)(5) to 160D-108
 - 153.360(B) and (C) Vesting - add regulations of Permit Choice in accordance with 160D-108(b)
 - 153.360(C) Vesting – add regulations for site specific vesting plans in accordance with 160D-108(d)
 - 153.360(D) Vesting – add regulations for vesting of a multi-phase development plan.
 - 153.360(E)-(I) Add approval procedures for various site specific vesting development types

- 153.360 Remove previous language regarding Phasing (formally 153.360(C))
- 153.361 Phasing – Removed from this section and replaced with new language in 153.360
- Permit Applications for Special Use Permits –Procedure modifications for Quasi-judicial process
 - 153-362(C) Review. Delete Planning Board recommendation requirements.
 - 153-362(D) Approval Process - Outline the Quasi-judicial hearing requirements by the Board of Commissioners with reference to the Quasi-Judicial Hearing process by reference to new section 153.363

New Sections:

- 153.363 Decisions and Notification Procedures
 - New section of the Code that outlines the specific notification and decision procedures for Administrative decisions, legislative decisions, and Quasi-judicial decisions. This is then cross referenced through the code to create uniform procedures for all Boards and committees
- 153.364 Conflict of Interest
 - Add Section outlining new Conflict of Interest regulations in accordance with 160D-109
- 153.365 Enforcement
 - Add Section to outline violation procedures for violation to the code. This is cross referenced in other chapters.

Chapter 10 General Provisions

§ 10.19 APPEAL OF CIVIL CITATIONS.

Civil citation issued pursuant to § 10.99, except civil citation issued in violation of Chapter 150 Building Regulations, 151 Flood Damage Prevention, 152 Subdivisions and 153 Zoning, may be appealed first to the head of the issuing department, or their designees, and, then, to the Town Manager, or their designee, if the appealing party finds the department head's decision unacceptable in accordance with this section. Those issued under Title XV - Land Usage Section of the code shall follow procedures outlined in 153.322. An appeal of a civil citation shall adhere to the following procedure:

(A) To be considered, an appeal of a civil citation shall be submitted in writing to the Town Clerk within 14 days from the date the civil citation is issued.

(B) Upon receipt, the Town Clerk shall forward the appeal to the department head for review and action to either reverse or affirm the issuance of the civil citation. In their consideration of the appeal request, the department head shall include written and/or oral comment from the appealing party and the staff member who issued the civil citation. The department head shall review and act on the appeal as soon as possible or within 30 days of the date of receipt to complete this process.

(C) In the event the appealing party is dissatisfied with the department head's action to either reverse or affirm the issuance of the civil citation, a second appeal request may be submitted in writing to the Town Manager by the appealing party not later than five days from the date the first appeal is held, and this second appeal shall be held as soon as possible or within 30 days of the department head's decision.

(D) After deliberation, the Town Manager may reverse or affirm the decision of the department head on the issuance of the civil citation.

(E) In the event the appellant has exhausted all administrative remedies with the town, then they may file a civil action in the Superior Court for Dare County, North Carolina.

(Ord. 05-17, passed 9-12-05)

§ 10.99 GENERAL PENALTY.

(A) In accordance with G.S. § 160A-175, and unless this code of ordinances provides otherwise, violation of any provision hereof shall be a Class 3 misdemeanor as provided in G.S. § 14-4, punishable upon conviction by a fine not exceeding \$50 or by imprisonment not exceeding 30 days. An ordinance may provide by express statement that the maximum fine or term of imprisonment to imposed for its violation shall be some figure or number of days less than the maximum penalties prescribed by G.S. § 14-4.

(B) Penalties.

(1) As authorized by G.S. § 160A-175, the violation of any of the provisions of this code shall subject the person or entity violating such provisions to a civil penalty of \$50 per day for each of the first 15 days such violation continues after notice of the violation from the town,

\$100 per day for the sixteenth through the thirtieth day such violation continues after the initial notice from the town, and \$500 or the maximum amount authorized under the provisions of the North Carolina General Statutes, whichever is greater, for each day after 30 days that such violation continues after the initial notice from the town.

(2) The imposition and collection of the foregoing civil penalties shall be in addition to all other remedies available to the town at law or in equity, authorized under the provisions of the North Carolina General Statutes, including but not limited to the suspensions of licenses and permits and actions to abate, enjoin or otherwise remedy violations of this code and all such remedies shall be cumulative. The imposition of civil penalties or the use of any other civil remedy available to the town shall be in addition to and not exclusive of any criminal proceeding and/or penalties available and/or imposed for the violation of this code.

(C) An ordinance may provide, when appropriate, that each day's continuing violation shall be a separate and distinct offense.

(D) Notice of Violation Procedure

(1) For any and all violations of this Code of Ordinances, the authorized staff shall give written notice to the landowner of the subject property and tenant, if applicable. The written notice shall be delivered by personal delivery, electronic mail or by first-class mail. The notice shall be provide to the last address listed for the owner on the Dare County tax records and / or to the physical property address. For the purposes of this notice, delivery by first-class mail shall be deemed received on the third (3rd) business day following deposit of the notice in the mail with the United States Postal Service and delivery by electronic mail shall be deemed received on the date sent.

(2) Posted Notice: Notice of violations may also be posted on the property at the discretion of the authorized staff.

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(C) *Absentee ballots.* Absentee ballots shall be allowed in the regular town elections, including primaries, if applicable, and including run-off elections, if applicable, in accordance with the provisions of G.S. § 163-302.

(Ord. passed - -)

§ 30.05 BOARD OF COMMISSIONERS.

The Board of Commissioners shall hold such regular meetings as may be determined from time to time by amendment and adoption of the *Suggested Rules of Procedure for a City Council*. Unless otherwise scheduled, all meetings of the Board will be held in the meeting room of the administration building at 102 Town Hall Drive, off Colington Road. All members shall abide by the Conflict of Interest standards outlined in 153.364.

(Ord. passed - -)

§ 30.06 ORDINANCES AND RESOLUTIONS.

(A) *Official copies.* For each and every ordinance, contract or resolution adopted by the Board of Commissioners in accordance with the provisions of the *Suggested Rules of Procedure for a City Council*:

(1) There shall be a true copy of every ordinance, or any other document which has the effect of ordinance, which has been duly enacted by the Board and signed by the Mayor and the Town Clerk and which shall be known and recognized as an official copy of such ordinance.

(2) There shall be a true copy of every resolution which has been duly enacted by the Board and signed by the Mayor and the Town Clerk and which shall be known and recognized as an official copy of such resolution.

(B) *Effective date.* All ordinances and resolutions passed by the Board of Commissioners shall be in full force and effect from and after their ratification, unless the Board establishes a different effective date at the time of such ratification.

(Ord. passed - -)

§ 30.07 FILLING OF VACANCIES.

In case of death, disability or resignation or if a vacancy is created by any other means in the elected officials of the town, a successor shall be selected by a majority vote of the Board.

TOWN OFFICERS

§ 30.20 APPOINTMENTS.

At the first meeting of the Board of Commissioners after their election and qualification, or as soon thereafter as possible, they shall proceed to appoint the Town Manager and Town Attorney.

(Ord. passed - -)

AN ORDINANCE AMENDING THE KILL DEVIL HILLS TOWN CODE,
CHAPTER 31, BOARDS AND COMMISSIONS

BE IT HEREBY ORDAINED BY the Kill Devil Hills Board of Commissioners that Chapter 31, Boards and Commissions, of the Kill Devil Hills Town Code, shall be amended by adding the underlined language and deleting the following stricken language to the sections identified below, as follows:

CHAPTER 31: BOARDS AND COMMISSIONS

Section

Planning Board

- 31.01 Established; jurisdiction
- 31.02 Membership; terms, vacancy, attendance
- 31.03 Official record; meetings; quorum; voting
- 31.04 Powers and duties; comprehensive plan

31.05 Oath of Office

31.06 Conflict of Interest

Community Appearance Commission

- 31.20 Appearance Commission established
- 31.21 Duties of the Appearance Commission
- 31.22 Meetings of the Community Appearance Commission
- 31.23 Staff services; advisory council
- 31.24 Receipt and expenditure of funds

31.25 Oath of Office

31.26 Conflict of Interest

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(DE) The Planning Board may provide a preliminary forum for review of quasi-judicial Special use Permit decisions, provided that no part of the forum or recommendation may be used as a basis for the deciding Board.

(ED) The Planning Board may perform any of the actions authorized for municipal planning boards by ~~G.S. § 160A-387, 160D-301~~, as amended.

31.03 Oath of Office

All members Appointed to boards under this section shall, before entering their duties, qualify by taking an oath of office.

31.04 Conflict of Interest

All members shall abide by the Conflict of Interest standards outlined in 153.364

(’88 Code, § 15-29) (Ord. passed 12-9-75)

COMMUNITY APPEARANCE COMMISSION

§ 31.20 APPEARANCE COMMISSION ESTABLISHED.

(A) There is hereby established a commission to be known as the Kill Devil Hills Community Appearance Commission **in accordance with 160D-304**.

(B) The Community Appearance Commission shall consist of seven members, including the chairperson, all of whom shall be residents, property owners, or business owners of the town. At least three members shall represent the town's business community (and they may reside in- or out-of-town) being Kill Devil Hills business owners; at least three members shall represent the town's residential community being either in- or out-of-town residential property owners; at least one member shall be a year-round resident of the Town of Kill Devil Hills and who does not necessarily own property in Kill Devil Hills. Desirable training and experience for members of the Community Appearance Commission includes a design field, such as architecture, landscape design, horticulture, city planning, or a closely related field; however, interest, commitment, and enthusiasm are characteristics required of all potential appointees.

(C) The members of the Community Appearance Commission shall be appointed by the Board of Commissioners to serve terms of three years each; provided, however, that the initial members shall serve staggered terms. If a vacancy occurs in the membership of the Commission, the Board of Commissioners shall appoint a successor to fill the unexpired term. All members of the Commission shall serve at the pleasure of the Board of Commissioners and may be removed by the Board with or without cause.

(1) A member of the Board of Commissioners.

(2) A member of the Planning Board, appointed by the membership of the Planning Board, shall serve in an ex officio status on the Community Appearance Commission; this position shall have no vote on matters before the Community Appearance Commission. The Planning Board representative shall provide assistance and guidance on issues and matters

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under consideration by the Planning Board that may have pertinent bearing on issues and matters before the Community Appearance Commission.

(3) The Town Manager shall assign such staff members to provide support to the Community Appearance Commission as deemed necessary and appropriate.

(D) At its organizational meeting, the Community Appearance Commission shall select a Chairman and Vice-Chairman. Thereafter, at its first meeting during a new calendar year the Community Appearance Commission shall select a Chairman and Vice-Chairman. The officers shall be eligible to succeed themselves.

(E) Faithful attendance at the meetings of the Commission is considered a prerequisite for the continuation of membership on the Commission. A majority of the Commission members may recommend to the Board of Commissioners, for action, the removal of any member who misses more than one-third of the meetings during any 12-month period. (Ord. 12-19, passed 9-10-12; Am. Ord. 13-7, passed 5-13-13; Am. Ord. 16-12, passed 4-9-18)

§ 31.21 DUTIES OF THE APPEARANCE COMMISSION.

The Community Appearance Commission shall serve the Board of Commissioners in an advisory capacity. The Commission's responsibilities may include, but are not necessarily limited to:

(A) Studying the visual needs of the town and recommending plans to carry out programs that will, in accordance with the powers herein granted, enhance and improve the visual quality and aesthetic characteristics of the town;

(B) Initiating, promoting and assisting in the implementation of programs of general community beautification in the town;

(C) Coordinating the activities of individuals, agencies and organizations, public and private, whose plans, activities and programs bear upon the appearance of the town;

(D) Preparing both general and specific plans for the improved appearance of the town. These plans may include the entire town or any part thereof, and may include private and public property. The plans shall set forth desirable standards and goals for the aesthetic enhancement of the town or any part thereof within its area of planning and zoning jurisdiction, including public ways and areas, open spaces and public and private buildings and projects;

(E) Participating in the implementation of the plans it develops;

(F) Formulating and recommending to the Planning Board and Board of Commissioners the adoption or amendment of ordinances, including the zoning code, subdivision regulations and other local ordinances proposing to regulate the use of property to enhance the appearance of the town;

(G) Directing the attention of town officials to necessary enforcement of any ordinance that may improve the appearance of the town;

(H) Seeking voluntary adherence to the standards and policies of the plans developed by the Community Appearance Commission;

(I) Promoting public interest in and an understanding of its recommendations, studies and plans;

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(Ord. 12-19, passed 9-10-12)

§ 31.22 MEETINGS OF THE COMMUNITY APPEARANCE COMMISSION.

(A) The Community Appearance Commission is a public body and as such shall use Suggested Rules of Procedure for Small Local Government Boards as its official procedural guide. It shall keep an accurate record of the business transacted before it, which records shall be open to the public. A record of the attendance of its members shall be kept.

(B) The Community Appearance Commission may meet monthly, but shall meet at least once quarterly; all meetings shall be open to the public in accordance with the North Carolina Open Meetings Law, G.S. 143-318. Special meetings, at the call of the chairman, shall be held as necessary. A quorum shall consist of four members of the Community Appearance Commission.

(Ord. 12-19, passed 9-10-12)

§ 31.23 STAFF SERVICES; ADVISORY COUNCIL.

The Community Appearance Commission may recommend to the Board of Commissioners suitable arrangements for the procurement or provision of staff or technical services for the Commission and the Board may appropriate such amount as it deems necessary to carry out the purposes for which the Commission was created. The Commission may establish an advisory council or other committees.

(88 Code, § 15-49)

§ 31.24 RECEIPT AND EXPENDITURE OF FUNDS.

The Board of Commissioners may receive contributions from private agencies, foundations, organizations, individuals, the state or federal government or any other source for the purposes of this section. The Community Appearance Commission may disburse these funds for any purpose within the scope of its authority as specified in this subchapter in the Community Appearance Commission's annual budget as approved by the Board of Commissioners. However, all expenditures by the Community Appearance Commission shall be recorded in the monthly minutes of the regular Board meetings for the expenditures of the previous month. All sums appropriated by the town to further the work and purposes of the Commission are deemed to be for a public purpose and a necessary expense.

31.25 Oath of Office

All members Appointed to boards under this section shall, before entering their duties, qualify by taking an oath of office.

31.26 Conflict of Interest

All members shall abide by the Conflict of Interest standards outlined in 153.364

(88 Code, § 15-51) (Am. Ord. 14-30, passed 5-13-15)

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HISTORIC LANDMARKS COMMISSION

§ 31.40 ESTABLISHED; MEMBERSHIP; TERMS.

(A) There is hereby established a Kill Devil Hills Historic Landmarks Commission ("Commission") under the authority of ~~Chapter 160A, Article 19, Part 3C~~ **Chapter 160D-303** of the North Carolina General Statutes.

(B) The Commission shall consist of five members appointed by the Board of Commissioners. All members shall reside within the planning and zoning jurisdiction of Kill Devil Hills. A majority of the members of the Commission shall have demonstrated special interest, experience or education in history, architecture, archaeology or related fields. The Commission may appoint advisory bodies and committees as appropriate.

(C) Members of the Commission shall serve terms of three years. Terms shall be staggered.

(Ord. 04-05, passed 4-12-04; Am. Ord. 14-23, passed 1-12-15)

§ 31.41 POWERS AND DUTIES.

(A) The powers of the Historic Landmarks Commission are as follows:

(1) Undertake an inventory of properties of historical, prehistoric, architectural and/or cultural significance.

(2) Recommend to the Board of Commissioners individual structures, buildings, sites, areas or objects to be designated by ordinance as "Landmarks".

(3) Recommend to the Board of Commissioners that designation of any building, structure, site, area or object as a landmark, be revoked or removed for cause.

(4) Review and act upon proposals for the alteration or demolition of designated landmarks.

(5) Conduct an educational program with respect to historic landmarks within its jurisdiction.

(6) Cooperate with the state, federal and local government in pursuance of the purpose of this subchapter; to offer or request assistance, aid, guidance or advice concerning matters under its purview or mutual interest. The Board of Commissioners, or the Commission when authorized by the Board of Commissioners, may contract with the State or the United States, or any agency of either, or with any other organization provided the terms are not inconsistent with state or federal law.

(7) Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee or agent of the Commission may enter any private building or structure without express consent of the owner or occupant thereof.

(8) Prepare and recommend the official adoption of a preservation element as part of the Town of Kill Devil Hills comprehensive plan.

(9) Acquire by any lawful means the fee or any lesser included interest, including options to purchase, to any such properties designated as landmarks; to hold, manage, preserve, restore and improve the same; and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding

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restrictions which will secure appropriate rights of public access and promote the preservation of the property.

(10) Restore, preserve and operate historic properties.

(11) Negotiate at any time with the owner of a building, structure, site, area or object for its acquisition or its preservation, when such action is reasonably necessary or appropriate.

(B) Prior to any official action the Commission shall adopt rules of procedure governing its meetings and the conduct of official business and bylaws governing the appointment of members, terms of office, the election of officers and related matters. A public record shall be kept of the Commission's resolutions, proceedings and actions. The Commission shall also prepare and adopt principles and guidelines for altering, restoring, moving, or demolishing properties designated as landmarks.

(Ord. 04-05, passed 4-12-04)

§ 31.42 HISTORIC LANDMARK DESIGNATION PROCEDURE.

(A) Upon complying with the required landmark designation procedures set forth herein, the Board of Commissioners 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 landmark unless it is deemed and found by the Commission to be of special significance in terms of its historical, prehistoric, design, setting, workmanship, materials, feeling and/or association.

(B) 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 prehistoric 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 landmark, the ordinance shall require that the waiting period set forth in this subchapter be observed prior to its demolition. A suitable sign for each property designated as a landmark may be placed on the property at the owner's consent; otherwise the sign may be placed on a nearby public right-of-way.

(C) No property shall be designated as a landmark until the following steps have been taken:

(1) As a guide for the identification and evaluation of landmarks, the Commission shall, at the earliest possible time and consistent with the resources available to it, undertake an inventory of properties of historical, architectural, prehistoric and cultural significance with Kill Devil Hills.

(2) The Commission shall make or cause to be made an investigation and report on the historic, architectural, prehistoric, educational or cultural significance of each building, structure, site, area or object proposed for designation or acquisition. Such report shall be forwarded to the Division of Archives and History, North Carolina Department of Cultural Resources.

(3) The Department of Cultural Resources, acting through the State Historic Preservation Officer, or his or her designee, shall either upon request of the Department or at the initiative of the Commission be given an opportunity to review and comment upon

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the substance and effect of the designation of any landmark. All comments will be provided in writing. If the Department does not submit its comments to the Commission within 30 days following receipt by the Department of the report, the Commission and the Board of Commissioners shall be relieved of any responsibility to consider such comments.

(4) The Commission and the Board of Commissioners shall hold a joint **legislative** public hearing (or separate ~~legislative-public~~ **legislative public** hearings) on the proposed ordinance. Reasonable notice of the time and place thereof shall be given.

(5) Following the public hearing(s) the Board of Commissioners may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposed ordinance. **Notice of hearing shall be as provided in 153.363 Decisions and Notification Procedures**

(6) Upon adoption of the ordinance the owners and occupants of each 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 Commission in the office of the Register of Deeds of Dare County. Each landmark shall be indexed according to the name of the owner of the property in the grantor and grantee indexes in the Register of Deeds office and the Commission shall pay a reasonable fee for filing and indexing. A second copy of the ordinance and all amendments thereto shall be kept on file in the office of the Kill Devil Hills 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 building inspector. The fact that a building, structure, site, area or object has been designated a building, structure, site, area or object has been designated a landmark shall be clearly indicated on all tax maps maintained by Dare County for such period as the designation remains in effect.

(7) Upon the adoption of the landmark ordinance or any amendments thereto, it is the duty of the Commission to give notice thereof to the tax supervisor of Dare County. The tax supervisor in appraising it for tax purposes shall consider the designation and any recorded restrictions upon the property limiting its use for preservation purposes. (Ord. 04-05, passed 4-12-04)

§ 31.43 CERTIFICATE OF APPROPRIATENESS.

(A) Definition. For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

EXTERIOR FEATURES. Includes 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 features. **EXTERIOR FEATURES** may also include historic signs, color and significant landscape, archaeological and natural features of the area. In the case of outdoor advertising signs, **EXTERIOR FEATURES** shall be construed to mean the style, material, size and location of all such signs.

(B) Certificate of Appropriateness required.

(1) From and after the designation of a landmark, no exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features), nor any above-ground utility structure nor any type of

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(1) Prior to the issuance or denial of a Certificate of Appropriateness the applicant or other property owner(s) likely to be materially affected by the application shall be given an opportunity to be heard. All meetings of the Commission shall be open to the public in accordance with the North Carolina Open Meetings Laws, G.S. Ch. 143, Art. 33C. **Decision on certificate of appropriateness of 160D are quasi-judicial and shall follow procedures of 160D-406.**

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

(b) The 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 landmarks for which consent for interior review has been given by the owners. Such consent of an owner for interior review shall bind future owners and/or successors in title; provided such consent has been filed in the Register of Deeds office and indexed according to the name of the owner of the property in the grantor and grantee indexes. The landmark designation shall specify the interior features to be reviewed and the specific nature of the Commission's jurisdiction over the interior.

(3) (a) In any action granting or denying a Certificate of Appropriateness, an appeal by an aggrieved party may be taken to the Board of Adjustment.

(b) Written notice of the intent to appeal must be sent to the Commission, post marked within 30 days following the decision. Appeals shall be in the nature of certioraris. Appeals of decisions of the Board of Adjustment shall be heard by the Superior Court of Dare County.

(c) The State of North Carolina shall have a right of appeal to the North Carolina Historical Commission, which shall render its decision with 30 days from the date that the notice of appeal by the state is received by the Historical Commission. The decision of the Historical Commission shall be final and binding upon both the state and the Commission. (Ord. 04-05, passed 4-12-04)

§ 31.44 ADMINISTRATIVE APPROVAL OF MINOR WORKS.

(A) For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

MINOR WORKS. Those exterior changes that do not involve substantial alterations, additions or removals that could impair the integrity of the property. **MINOR WORKS** shall be limited to those listed in the Commission's "Design Guidelines".

(B) Notwithstanding § 31.43(D), (Action on Certificates of Appropriateness), upon receipt of a completed application the Zoning Administrator may issue a Certificate of Appropriateness for a minor works.

(C) No application may be denied without formal action of the Commission. All minor works applications approved by the Zoning Administrator shall be forwarded to the Commission in time for the next scheduled meeting.

(Ord. 04-05, passed 4-12-04)

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(C) An application for a Certificate of Appropriateness authorizing the demolition of a building, structure or site determined by the State Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the Commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

31.49 Oath of Office

All members Appointed to boards under this section shall, before entering their duties, qualify by taking an oath of office.

31.50 Conflict of Interest

All members shall abide by the Conflict of Interest standards outlined in 153.364.

(Ord. 04-05, passed 4-12-04)

BOARD OF ADJUSTMENT

§ 31.60 BOARD OF ADJUSTMENT ESTABLISHED.

Pursuant to ~~G.S. § 160A-388~~ **G.S. 160D-302**, the Board of Commissioners establishes a Board of Adjustment for the purpose of hearing matters as provided for in the enabling act of the General Assembly.

(Ord. 13-21, passed 11-13-13)

§ 31.61 COMPOSITION; ATTENDANCE; MEETINGS.

(A) The Board of Adjustment shall consist of five members who shall be residents of the town and shall be appointed by the Board of Commissioners. In addition, three alternate members shall be appointed by the Board of Commissioners. Alternate members shall serve on the board in the absence or temporary disqualification of any regular member or fill a vacancy pending appointment of a member. Each alternate serving on behalf of any regular member has all the powers and duties of a regular member.

(B) Each regular member of the Board of Adjustment shall notify the secretary at least five days in advance of every regular meeting in the event he cannot attend such meeting. The Secretary shall then immediately notify an alternate member to attend this meeting.

(C) All meetings of the Board shall be held at a regular place and shall be open to the public. A quorum of four members shall be present at the designated meeting place before a vote is taken or final disposal of any appeal is made upon which the board is required to pass.

(D) The Board shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, an indication of such fact; and the final disposition of appeals and variances shall be recorded resolution indicating the reasons of the Board therefor all of which shall be a public record.

(Ord. 13-21, passed 11-13-13)

§ 31.62 TERM.

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The term of office of the members of the Board of Adjustment shall be three years and appointment shall be made for terms of one year, two years and three years initially to the end that the Board of Adjustment shall have continuity, and upon the expiration of the initial one- and two-year terms each person thereafter appointed shall serve for three years. This shall be effective upon the expiration of any existing term of office.

(Ord. 13-21, passed 11-13-13)

§ 31.63 COMPENSATION.

The Board of Commissioners shall provide, from time to time, compensation to the members of the Board of Adjustment based on attendance at meetings. Alternate members serving at regular or special meetings shall be compensated in the same manner as if they were regular members.

(Ord. 13-21, passed 11-13-13)

§ 31.64 VACANCIES.

Vacancies on the Board of Adjustment, from time to time, shall be filled for the unexpired term of the member being replaced to the end that there shall be continuity upon the Board.

(Ord. 13-21, passed 11-13-13)

§ 31.65 REMOVAL.

Any member or alternate may be removed in accordance with the personnel policy of the town.

(Ord. 31-21, passed 11-13-13)

§ 31.66 OFFICES.

The Board of Adjustment shall make the appointment for the Chairperson and the Vice-Chairperson from within its own membership annually.

(Ord. 31-21, passed 11-13-13)

31.67 Oath of Office

All members Appointed to boards under this section shall, before entering their duties, qualify by taking an oath of office.

31.68 Conflict of Interest

All members shall abide by the Conflict of Interest standards outlined in 153.364

AN ORDINANCE AMENDING THE KILL DEVIL HILLS TOWN CODE,
CHAPTER 150, BUILDING REGULATIONS

BE IT HEREBY ORDAINED BY the Kill Devil Hills Board of Commissioners that Chapter 150, Building Regulations, of the Kill Devil Hills Town Code, shall be amended by adding the underlined language and deleting the following stricken language to the sections identified below, as follows:

CHAPTER 150: BUILDING REGULATIONS

Section

General Provisions

- 150.01 Compliance with zoning regulations; setback certification
- 150.02 Moving buildings
- 150.03 Certificate of occupancy
- 150.04 Construction prohibited in certain areas
- 150.05 Building Inspector
- 150.06 Building Code

Permits and Licenses

- 150.20 Building permit required
- 150.21 Site plan; surety bond
- 150.22 Sand hauling
- 150.23 Permit for land-disturbing activity
- 150.24 Expiration
- 150.25 Permit and development review fees
- 150.26 Development review fees
- 150.27 Building permit fees

150.28 Transportation license; surety bond; failure to repair public property

150.29 Development review and building permit information

Uniform Street Address System

150.40 Established

150.41 Base streets

150.42 Directional prefixes

150.43 Diagonal streets

150.44 Numbering of blocks

150.45 Determination of intervals and addresses

150.46 Address assignment

150.47 Placement of numbers and letters

150.48 Address record book

150.49 Compliance with subdivision regulations

150.50 Duplicate names

GENERAL PROVISIONS

§ 150.01 COMPLIANCE WITH ZONING REGULATIONS; SETBACK CERTIFICATION.

(A) All construction and additions to present buildings must conform to the requirements of Ch. 153 and Chapter 151.

(B) After foundation installation, no work shall continue until the person holding the building permit presents to the Building Inspector an "as built foundation" survey by a registered surveyor which affirmatively shows that the building or structure is located in accordance with the application for the permit and that the front, side and rear line setbacks, as well as other requirements of this chapter, have been complied with and that such structure is properly located on its lot or parcel of land in accordance with this chapter.

(`88 Code, § 4-1) (Ord. passed 12-14-87) Penalty, see § 10.99

§ 150.02 MOVING BUILDINGS.

(A) *Into town.* Before any building shall be moved into the town, it shall be inspected by the Building Inspector and shall meet construction standards for buildings located within the town prior to the issuance of a building permit.

(B) *Within town.* Before any house shall be moved from any place in town to another place within the town, it must have been inspected by the Building Inspector and received a written permit to so move the building.

(`88 Code, § 4-2) (Ord. passed 12-14-87)

Statutory reference:

Moving permit required, see G.S. § 160A-417

§ 150.03 CERTIFICATE OF OCCUPANCY.

No building or structure within the town shall be occupied for human habitation, commercial use or other use until the person holding the building permit has affirmatively shown the Building Inspector that the conditions required by all applicable town codes, site plans and building permits have been complied with, including an as built survey of improvements. Upon such an affirmative showing and upon paying the appropriate fee, which shall be kept on file in the office of the Building Inspector, the Building Inspector is authorized to issue a certificate of occupancy.

(`88 Code, § 4-3) (Ord. passed 12-14-87) Penalty, see § 10.99

§ 150.04 CONSTRUCTION PROHIBITED IN CERTAIN AREAS.

(A) No person shall build upon any lot or parcel that abuts a dedicated street right-of-way that is designated as unimproved by the current year's Powell Bill Map.

(B) No person shall build upon a lot or parcel that does not have public water available at street- side.

(C) No person shall build upon any lot or parcel in violation of any other applicable section of this chapter.

(`88 Code, § 4-4) (Ord. passed 12-14-87) Penalty, see § 10.99

§ 150.05 BUILDING INSPECTOR.

(A) *Office created; appointment; designation of duties.* The office of Building Inspector is created. The Town Manager shall appoint the Inspector and designate the general duties of the Building Inspectors.

(`88 Code, § 4-41)

(B) *Powers.* The Building Inspector shall possess all the power conferred and perform all the duties prescribed by state law. He shall possess such further power and perform such further duties as may be prescribed by the Board. The Inspector or his deputies shall have the right to enter at all reasonable times any building, structure or premises within the town for the purposes of inspecting or in the performance of his duties, upon presentation of proper credentials as provided in ~~G.S. §§ 160A-420 and 160A-424~~ [NCGS §160D-1113 and NCGS §160D-1117.](#)

[\(C\) The Building Inspectors shall comply with Conflict of Interest standards in 153.364 of the Town Code.](#)

(`88 Code, § 4-42)

(Ord. passed 12-14-87)

150.06 DUTIES AND RESPONSIBILITY OF THE CODE COMPLIANCE OFFICER

(A) Enforcement within their planning and development regulations jurisdictions State and local law relating to:

(1) Construction of building and other structures;

(2) Installation of such facilities as plumbing systems, electrical systems, heating systems, refrigeration systems, and air conditioning systems;

(3) The maintenance of buildings and other structures in-s a safe, sanitary, and healthy condition;

(4) All chapters of the Town Code related to building, nuisance, and development regulations;

(5) Performing inspections in accordance with 160D-1104(c)-(f);

(6) Other matters that may be specified by the Board of Commissioners.

(NCGS §160D-1104)

§ 150.06-07 BUILDING CODE.

(A) Adopted.

(1) The North Carolina State Building Code, Volume I, General Construction; Volume I-A, Administration and Enforcement; Volume I-C, Accessibility Code; Volume II, Plumbing; Volume III, Mechanical; Volume IV, National Electric Code; Volume V, Fire; Volume VI, Gas; Volume VII, Residential; Volume VIII, Modular Construction Regulations, Regulations for Manufactured/Mobile Homes; Volume IX, Existing Buildings; and Volume X, Energy, as now in effect or as may be subsequently amended, are adopted by reference as if set forth fully herein as the Building Code of the town. It is adopted to the extent such code is applicable for safe and stable design, methods of construction, minimum standards and use of materials in buildings or structures erected, enlarged, altered, repaired or otherwise constructed or reconstructed after December 14, 1987.

(a) Appendix M, International Residential Code/NC, as amended.

(2) A member of the Town Planning and Inspections Department, certified by the North Carolina Code Qualifications Board, shall administer and enforce the provisions of the North Carolina State Building Code, except that in accordance with Ch. 95 of this code, the Fire Department shall administer and enforce the provisions of Volume 5, Fire Prevention.

(`88 Code, § 4-61) (Ord. passed 12-14-87; Am. Ord. 91-01, passed 5-13-91; Am. Ord. 05-10, passed 6-22-05; Am. Ord. 09-05, passed 5-27-09; Am. Ord. 11-03, passed 1-26-11)

(B) Penalties for violation.

(1) Notwithstanding anything else to the contrary in this chapter, if any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of this chapter, the Building Inspector, or any appropriate authority, in addition to other remedies, may institute any appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use to restrain, correct or abate such violation, to prevent the occupancy of such building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.

(2) Violation of the provisions of these regulations shall be a misdemeanor under G.S. § 14-4, and each days continuing violation shall be a separate offense. Notwithstanding the criminal penalties, the Building Inspector or the Zoning Administrator may institute a civil action against the offender seeking enforcement by appropriate equitable remedy, injunction and order of abatement or by any remedy authorized by G.S. §§ 160A-175 and ~~160A-389~~ 160D-1119, as amended.

(3) Enforcement.

(a) Any work or activity subject to regulations pursuant to this chapter or other applicable local development regulations or any State law delegated to the local government undertaken in substantial violation of any State to local law, or in a manner that endangers life or property, staff may order that work or activity to be immediately stopped.

(b) When an activity is undertaken in violation of the development regulations adopted pursuant to this chapter or other local development regulations or any State law delegated to the local government for enforcement purposes a Notice of Violation can be issued in accordance with Chapter 10.99. Notice of Violation shall be posted on the property.

('88 Code, § 4-62) (Ord. passed 12-14-87)

Statutory reference:

Authority of town to adopt building code, see G.S. § 143-138

Violations, see G.S. § 143-138(h)

Authority of town to adopt building code by reference, see G.S. § 160A-76

Police power, see G.S. §§ 160A-174 et seq.

Permits generally, see G.S. §§ ~~160A-117~~ 160D-110 et seq.

Authority of town to set and enforce standards, see G.S. §§ ~~160A-141~~ 160D-1104 et seq.

PERMITS AND LICENSES

§ 150.20 BUILDING PERMIT REQUIRED.

§150.30 INSPECTIONS.

Local inspectors shall make as many inspections thereof as necessary to stratify that the work has been done according to the provisions of any applicable State and local law and of the terms of the permit. The inspector shall have the right to enter on any premises with the jurisdiction of the Planning and Inspections Department at all reasonable hours for the purpose of inspection or other enforcement action, upon presentation of proper credentials. Any inspection performed under the authority of this chapter shall be subject to the restriction names in N.C.G.S. §160D-403. (N.C.G.S. §160-1113)

UNIFORM STREET ADDRESS SYSTEM

§ 150.40 ESTABLISHED.

(A) There is established a uniform street address system by which all vacant parcels, lots and tracts of land fronting on all streets, avenues and public rights-of-way in the town and all houses and other buildings shall be numbered.

(B) A Street Address Committee is created consisting of the Mayors of the Towns of Kill Devil Hills, Kitty Hawk and Nags Head or their duly appointed representatives. This Committee will recommend street name changes to the towns and act on questions of implementation of the street address system.

('88 Code, § 18-106) (Ord. passed 4-18-83)

§ 150.41 BASE STREETS.

Ocean Bay Boulevard in Kill Devil Hills shall constitute the baseline for numbering principal buildings and vacant parcels, lots and tracts of land along all streets running in a northerly and southerly direction. Croatan Highway shall constitute the baseline for numbering buildings and vacant parcels, lots and tracts of land along all streets running in an easterly and westerly direction.

('88 Code, § 18-107) (Ord. passed 4-18-83)

§ 150.42 DIRECTIONAL PREFIXES.

Each northerly and southerly street south of Ocean Bay Boulevard shall be assigned the prefix "South." Each northerly and southerly street north of Ocean Bay Boulevard shall be assigned the prefix "North." Each easterly and westerly street west of Croatan Highway shall be assigned the prefix "West." Each easterly and westerly street east of Croatan Highway shall be assigned the prefix "East."

('88 Code, § 18-108)

§ 150.43 DIAGONAL STREETS.

All buildings and vacant parcels, lots and tracts of land on diagonal streets shall be numbered as though they are on northerly and southerly streets if the diagonal runs predominantly north to south. All buildings and vacant parcels, lots and tracts of land on diagonal streets shall be

- 152.37 General standards
- 152.38 Suitability of land
- 152.39 Storm water drainage system
- 152.40 Subdivision name
- 152.41 Street/road name signs
- 152.42 Utility and other easements
- 152.43 Water and sanitary sewer systems
- 152.44 Streets

Administration and Enforcement

- 152.55 Records, minutes, budgetary requirements
- 152.56 Amendments
- 152.57 Conflicts with the town code
- 152.58 Violations
- 152.59 Recording of exempt plats

GENERAL PROVISIONS

§ 152.01 TITLE.

This chapter shall be known as the Subdivision Code of the Town of Kill Devil Hills.

§ 152.02 AUTHORITY AND PURPOSE.

(A) *Purpose.* The Board of Commissioners does hereby adopt this chapter under the authority of ~~G.S. Ch. 153A, Art. 18, Part 2.C., Purpose.~~ N.C.G.S. §160A, Article 8. The purpose of this chapter is to establish procedures and standards for the development and subdivision of real estate within the town in an effort to, among other things, ensure proper legal description, identification, monumentation and recordation of real estate boundaries; further the orderly layout and appropriate use of land; provide safe, convenient and economic circulation of vehicular traffic; provide suitable building sites which drain properly and are readily accessible to emergency vehicles; assure the proper installation of roads and utilities; and help conserve and protect the physical and economic resources of the town.

(B) *Territorial jurisdiction.* The regulations hereinafter shall apply to all of the incorporated areas of the town.

(C) *Required compliance with regulations.* All plats for the subdivision of land shall conform to the requirements of this chapter, and shall be submitted in accordance with the procedures and specifications established herein.

ROAD. A right-of-way for vehicular traffic. The word **ROAD** shall include the word **STREET**.

SECONDARY or COLLECTOR ROAD. A road designed to carry medium volumes of vehicular traffic, to provide access to the primary road and to provide access to abutting properties.

SUBDIVIDER. Any person, owner, broker, surveyor, engineer, planner, corporation, partnership or the like who subdivides or develops any land deemed to be a subdivision as defined in this section.

SUBDIVISION. Any division of a tract or parcel of land into two or more lots, building sites, or other divisions, for the purpose, whether immediate or future, of sale or building development, including any division of land involving the dedication of a new street or a change in existing streets; provided, that the following shall not be included within this definition, nor shall they be subject to the regulations prescribed by this chapter:

- (1) The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to the standards of the town;
- (2) The division of parcels of land into parcels greater than ten acres where no street right-of-way dedicating is involved;
- (3) The public acquisition by purchase of strips of land for the widening or opening of streets;
- (4) The division of a tract in single ownership where the entire area of which is no greater than two acres into not more than three lots, if no street right-of-way dedication is involved and if the resultant lots are equal to the standards of the town.

MINIMUM DEVELOPMENTAL REQUIREMENTS

§ 152.15 MINIMUM REQUIREMENTS; VARIANCE.

The requirements set out in this subchapter shall be considered the minimum requirements and shall be varied only in specific cases.

§ 152.16 MODIFICATION OF REQUIREMENTS BY PLANNING BOARD.

The provisions of this subchapter concerning street widths, block lengths and widths, dead-end streets, lot widths and areas may be modified by the Planning Board, subject to final approval by the Board of Commissioners, in the case of an approved planned unit development (PUD), or a multi-family development in accordance with a well-studied plan, properly safeguarded by restrictions and which adequately provides for health, safety, traffic circulation, light and air needs and recreational requirements for the maximum anticipated population and containing such other requirements as may be recommended by the Planning Board and approved by the Board of Commissioners.

(Am. Ord. 08-01, passed 1-2-08)

~~§ 152.17 SUBDIVISION COMMITTEE.~~

~~—The Chairperson of the Planning Board may appoint a Subdivision Committee. The Subdivision Committee shall consist of at least two Board members along with technical and other staff members such as the Planner and/or Engineer as deemed appropriate. The purpose of the Subdivision Committee is to review, comment, and make recommendations with respect to subdivisions applications, and to perform other duties conferred on this Committee by the Board through a motion duly adopted and recorded.~~

PROCEDURE FOR SUBDIVISION PLAT APPROVAL

§ 152.25 SKETCH PLAN OR PRELIMINARY PLAT REQUIREMENT MAY BE WAIVED.

A sketch plan and preliminary plan required may be waived by the Planning Director for minor subdivisions provided that no new streets are proposed, and no improvements are required to be installed by the subdivider according to the provisions of this chapter. Additionally, final plat approval of minor subdivision plats where no streets are proposed, and no improvements are may be granted by the Chairperson of the Planning Board upon receipt of written technical review and certification of compliance from the Planning Director. Such action shall be reported for the record to the Planning Board at the next regularly scheduled meeting.

§ 152.26 SKETCH PLAN.

(A) Contents.

(1) Prior to the filing of an application for approval of the preliminary plan, the subdivider shall submit to the Planning Department 15 copies of a sketch plan of the proposed subdivision.

(2) The sketch plan (prepared by architect, engineer, or hand drawn) will contain the following information:

(a) A sketch map of the vicinity of the proposed subdivision showing its location in relation to neighboring tracts, subdivisions, roads, and waterways;

(b) The boundaries of the entire tract in common ownership and the portion of the tract to be subdivided;

(c) The total acreage to be subdivided;

(d) The existing and proposed uses of the land within the subdivision and the existing uses of land adjoining it;

(e) The proposed street layout with approximate pavement and right-of-way width, lot layout and size of lots;

(f) The name, address, and telephone number of the owner, and if applicable, a written and acknowledged statement of the owner designating the subdivider or other person to act as his agent for the submission of plats;

(g) The name of the proposed subdivision;

(a) The Board of Commissioners shall approve, table, or disapprove the preliminary plat.

(b) If the Board of Commissioners disapproves the preliminary plat, the reasons for such action shall be stated and recommendations made on the basis of which the proposed subdivision could be approved.

(Am. Ord. 08-01, passed 1-2-08)

§ 152.28 FINAL PLAT.

(A) *Preparation of final plat and installation of improvements.* Upon approval of the preliminary plat by the Board of Commissioners, the subdivider may proceed with the preparation of the final plat and the installation of required improvements in accordance with the approved preliminary plat and the requirements of this chapter. Prior to approval of a final plat, the subdivider shall have installed the improvements specified in this chapter. No final plat will be accepted for review by the Planning Board unless accompanied by a statement signed by the subdivider certifying that all of the provisions of this chapter have been complied with and that all of the required improvements have been installed. The final plat shall include only that portion of the preliminary plat which the subdivider proposes to record at that time.

(B) *Submission of the final plat.* The subdivider shall submit to the Planning Board the final plat, so marked, on or before the last Tuesday of the month:

(1) The final plat for the subdivision or for the first phase of the subdivision as indicated in the sequence of phases on the approved preliminary plat shall be submitted not more than 12 months after the date on which the preliminary plat was approved; otherwise, approval of the preliminary plat shall expire.

(2) Final Phasing of the Subdivision approval shall be in accordance with the site specific vesting requirements outlined in §153.360 of the Town Code. ~~The Planning Board may grant an additional 12 months for the installation of improvements and submission of the final plat if the subdivider applies for such extension in writing before the expiration of the initial period, and has made substantial progress (over 60% as determined by the Planning Board and documented in the application for extension) in installation of required improvements. The progress of required improvements must be verified by the Planning Board.~~

~~—(3) A final plat for each subsequent phase must be submitted within 12 months after the final plat for the previous phase has been approved, or the remaining phases shall be null and void.~~

(34) The final plat shall be prepared in accordance with the highest professional standards by a land surveyor or professional engineer currently licensed and registered in the state by the North Carolina State Board of Registration for Professional Engineers and Land Surveyors. The final plat shall conform to the provisions for plats, subdivisions, and mapping requirements set forth in G.S. § 47-30 and shall show or have attached to it a document showing the same information required for the preliminary plat.

(45) Fifteen copies of the final plat shall be submitted; three shall be reproducible black or blue line prints.

(56) The final plat shall be of a size suitable for recording with the Dare County Register of Deeds and shall be at a scale of not less than 1 inch equals 200 feet. Maps may be placed on more than one sheet with appropriate match lines.

(67) Submission of the final plat shall be accompanied by a cashier's or certified check payable to the Dare County Register of Deeds in the amount of the recording fee for the final plat and related documents.

(C) *Certification.* The following signed and acknowledged certificates or required portions thereof shall appear on all copies of the final plat:

(1) I hereby certify that I am the owner of the property shown and described hereon, which is located in the subdivision jurisdiction of the Town of Kill Devil Hills and that I hereby adopt this plan of subdivision with my free consent, establish minimum building setback lines, and dedicate all streets, alleys, walks, parks, and other sites and easements to public or private use as noted. Furthermore, I hereby dedicate all sanitary sewer, storm sewer and water lines to the Town of Kill Devil Hills.

Date Owner

(2) I, _____, hereby certify that _____ personally appeared before me this day and acknowledged the due execution of this certificate. Witness my hand and official seal this the _____ day of, _____ AD. _____

Signature of Notary Public

(3) State of North Carolina, Town of Kill Devil Hills.
I, _____, certify that this map was (drawn by me) (drawn under my supervision) from (an actual survey made by me) (an actual survey made under my supervision) (deed description record in Book _____, Page _____; Book _____, Page _____, etc.) (other); that the ratio of precision as calculated by latitudes and departure is 1: _____; that the boundaries not shown as broken lines plotted from information found in Book _____, Page _____; that this map was prepared in accordance with G.S. § 47-30, as amended; and that the prescribed reference points have been properly placed. Witness my hand and seal this _____ day of _____, A.D. _____.

Registration Number Registered Land Surveyor/Professional Engineer
Official Seal

I, _____, hereby certify
that _____ personally appeared before me this day
and acknowledged the due execution of this certificate. Witness my hand and official seal this
the _____ day of _____,
A.D. _____.

Signature of Notary Public

Official Seal

(D) *Review by the Planning Board.* The Planning Board shall review the final plat at or before its next regularly scheduled meeting which follows at least 15 days after it receives the final plat and shall approve the final plat if it is in compliance with this chapter or disapprove it if it is not within 75 days of receiving the plat.

(1) During its review of the final plat, the Planning Board may, with the consent of the Board of Commissioners, appoint a Registered Land Surveyor to confirm the accuracy of the final plat and/or installation of improvements. If substantial errors are found, the costs shall be charged to the subdivider and shall be paid before the plat will be considered further; the plat shall not be recommended for approval until such errors have been corrected.

(2) Adoption and Notification for subdivision shall follow the procedures outlined in §153.363 of the Town Code.

(23) If the Planning Board approves the final plat, such approval shall be shown on each copy of the plat by the following signed certificate:

(a) *Certificate of Approval for Recording.*

I hereby certify that the subdivision plat shown hereon has been found to comply with the subdivision code of the Town of Kill Devil Hills Planning Board for recording in the Office of the Register of Deeds of Dare County.

Date Chairman of the Town of Kill Devil Hills Planning Board

(b) If the final plat is approved by the Planning Board, one reproducible and one print of the plat shall be returned to the subdivider; one reproducible and one print shall be filed with the County Tax Supervisor's Office; and one print shall be retained by the Planning Board for its files; and one reproducible shall be filed by the Planning Department with the Register of Deeds.

(34) If the final plat is disapproved by the Planning Board, the reasons for such disapproval shall be stated in writing, specifying the provisions of this chapter with which the final plat does not comply: One copy of such reasons and one print of the plat shall be retained by the Planning Board as part of its proceedings; one copy of the reasons and one copy of the plat shall be transmitted to the subdivider. If the final plat is disapproved, the subdivider may make such changes as will bring the final plat into compliance and resubmit the same for reconsideration by the Planning Board as if it were an original submission of a final plat.

(5) Appeals of decision for subdivision shall be in accordance with N.C.G.S. 160D-1403.
Appeals of decisions on subdivision plats.

STANDARDS

§ 152.35 DESIGN AND IMPROVEMENT STANDARDS.

(A) *Purpose.* The purpose of good subdivision and site design is to create a function and attractive development, to minimize adverse impacts, and to ensure a project will be an asset to a community. To promote this purpose, the subdivision shall conform to the following standards which are designed to result in a well-planned community without adding unnecessarily to development costs.

(B) *Site design standards.* Design of the development shall take into consideration all existing local and regional plans for the surrounding community.

(C) *Development of the site shall be based on the site analysis.* To the maximum extent practicable, development shall be located to preserve the natural features of the site, to avoid areas of environmental sensitivity, and to minimize negative impacts and alteration of natural features.

(D) *Open space.* The following specific areas shall be preserved as undeveloped open space, to the extent consistent with the reasonable utilization of land, and in accordance with applicable state or local regulations:

(1) Unique and/or fragile areas, including wetlands as defined in Section 404, Federal Water Pollution Control Act Amendments of 1972, and delineated on wetlands maps prepared by the U.S. Fish and Wildlife Service, field verified by on-site inspections;

(2) Significant trees or stands of trees, defined as the largest known individual trees of each species in the state, large trees approaching the diameter of the known largest tree, or species or clumps of trees that are rare to the area or of particular horticultural or landscape value;

(3) Steep slopes in excess of 20% as measured over a 10-foot interval unless appropriate engineering measures concerning slope stability, erosion and resident safety are taken;

(4) Habitats of endangered wildlife, as identified on federal or state lists;

(5) Historically significant structures and sites, as listed on federal or state lists of historic places;

(6) The development shall be laid out to avoid adversely affecting ground water and aquifer recharge.

§ 152.36 REFERENCE POINTS.

Prior to the approval of the final plat, the subdivider shall have in place the following permanent reference points:

(A) *Subdivision corner tie.* At least one corner of the subdivision shall be designated by course and distance (tie) from a readily discernible reference marker.

(H) *Access to parks, schools, and the like.* Streets shall be designed or walkway and bikeway easements provided to assure convenient access to parks, playgrounds, schools and other places of public assembly. Walkway and bikeway easements shall be consistent with town standards.

(I) *Discourage through traffic.* Minor residential access streets shall be laid out so as to discourage through traffic.

(J) *Access streets and the like.* Where a tract of land to be subdivided adjoins an arterial street, the subdivider may be required to provide a marginal access street parallel to the arterial street or reverse frontage on an interior street for the lots to be developed adjacent to the arterial streets. Where reverse frontage is established, deed restrictions or other means shall be provided to prevent private driveways from having direct access the arterial street.

(K) *Relation to topography.* In sloping terrain, streets shall parallel the contours of the land, in so far as practicable, to avoid steep grades and the concentration of storm surface runoff.

(L) *Conformity.* All proposed subdivisions shall be planned so as to facilitate the most advantageous development of an entire neighborhood area.

ADMINISTRATION AND ENFORCEMENT

§ 152.55 RECORDS, MINUTES, BUDGETARY REQUIREMENTS.

The Board of Commissioners and the Planning Board shall provide for the appropriate keeping of records, minutes, and other proceedings held to fulfill the Planning Board's responsibilities under the terms of this chapter. The Board of Commissioners may provide for such budgetary requirements as may be necessary in the administration of this chapter.

§ 152.56 AMENDMENTS.

This chapter may be amended from time to time by the Board of Commissioners in accordance with the provisions of G.S. § 153A-323.

§ 152.57 CONFLICTS WITH THE TOWN CODE.

Should the requirements of this chapter conflict with any portion of the town code, the more stringent requirements shall prevail.

§ 152.58 VIOLATIONS.

Any person who, being the owner, or agent of the owner of any land located within the jurisdiction of this chapter, transfers or sells such land by reference to, exhibition of, or any other use of a plat showing a subdivision of such land, before such plat has been properly approved in accordance with this chapter and recorded in the Office of the Register of Deeds, shall be guilty of a misdemeanor. The description of metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from the penalties provided therefore. The town may also seek injunctive relief for the illegal subdivision, transfer, conveyance or sale of land. [N.C.G.S. 160D-807](#)

§ 152.59 RECORDING OF EXEMPT PLATS.

(A) Any plat required to be recorded in the office of the Dare County Register of Deeds of land situated in the town, which complies with G.S. §~~160D-802~~ ~~160A-376~~ as an exempt plat, may be signed and certified by the Town Planner to be in compliance with such exemption statute.

(B) The combination or recombination of portions of previously subdivided and recorded lots, if the total number of lots is not increased, the combination will not create or increase any nonconformities of the Town Code, and the resultant lots are equal to or exceed the standards of the town as established by this chapter, or the resultant lot(s) will be equal to or less nonconforming by area.

(C) The division of land into parcels greater than ten acres, if no street right-of-way dedication is involved.

(D) The public acquisition by purchase of strips of land for the widening or opening of streets.

(E) The division of a tract of land in single ownership, the entire area of which is no greater than two acres, into not more than three lots, where no street right-of-way dedication.

(Am. Ord. 15-2, passed 6-24-15)

This amendment to Chapter 152, Subdivisions, shall be in full force and effect from and after the ____ day of _____, 2021. Adopted and approved by the Board of Commissioners of the Town of Kill Devil Hills at a regular meeting held on the ____ day of _____, 2021, by a vote of ____ in favor and ____ opposed.

SEAL

Ben Sproul
Mayor

ATTEST:

James Michael O'Dell
Deputy Town Clerk

APPROVED AS TO FORM:

side. The area between the roof and the railings or wall may be covered with screening materials only, and can not be enclosed with windows or other materials.

DENSITY. The number of dwelling units or hotel units which may be constructed upon a parcel of land, as allowed by the various zoning districts.

DEPARTMENT. The North Carolina Department of Environment and Natural Resources.

DEVELOPER. A person who is responsible for any undertaking that requires a zoning permit, special use permit, conditional use permit or building permit.

DEVELOPMENT. Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations which adds to or changes the amount of impervious or partially impervious cover on a land area, thereby decreasing the infiltration of precipitation into the soil and altering the hydrologic characteristics of the area. [The subdivision of land and or the initiation or substantial change in the use of the land or the intensity of the use of the land.](#)

DIRECTOR. The Director of the Division of Land Resources of the Department of Environment and Natural Resources.

DISCHARGE POINT. That point at which runoff leaves a tract of land.

DISTRICT. The Dare County Soil and Water Conservation District created pursuant to NCGS § Ch.139.

DOG DAY CARE FACILITY. A facility providing such services as canine day care for all or part of a day, obedience classes, training, grooming, or behavioral counseling, provided that overnight boarding is not permitted.

DRAINAGE AREA OR WATERSHED. That area contributing water runoff to a given area measured in a horizontal plane which is enclosed by a ridge line.

DRIVEWAY. An area of land used for vehicular ingress and egress which may be improved in accordance with the specifications of this chapter.

DRIVEWAY, RESIDENTIAL. A driveway providing vehicular ingress and egress to and from property used for residential purposes.

DUNES, OCEAN.

(1) **PRIMARY.** First mounds of sand located landward of the ocean beaches having an elevation equal to the mean flood level for the area plus six feet.

(2) **FRONTAL.** In areas where there is a primary dune, that dune shall be deemed to be the frontal dune. Where there is no primary dune, the frontal dune is deemed to be the first mound of sand located landward of the ocean beach having sufficient vegetation, height, continuity and configuration to offer protective value. Man-made mounds seaward of the natural line of frontal dunes and dunes created after June 1, 1979 shall not be considered to be frontal or primary dunes, except where no frontal or primary dune exists.

DUNE(S), INLAND. Mound(s) of sand other than primary or frontal dunes having an elevation of 15 feet or more above mean sea level.

§ 153.004 COMPLIANCE WITH DISTRICT REGULATIONS.

(A) No building, structure or land shall be used or occupied, and no structure or part thereof shall have to be constructed, except in conformity with all regulations herein specified for the district in which it is located. Permitted and ~~conditional~~-special uses are listed by districts within a schedule of district regulations. Any use not specifically designated a permitted or ~~conditional~~-special use shall be deemed to be prohibited.

(B) Notwithstanding the provisions of division (A) of this section or any other provisions of this chapter, street improvement projects initiated by the town shall not be subject to the provisions of this chapter. For the purpose of this section, the term **STREET IMPROVEMENT PROJECT** shall mean all improvements undertaken by the town within public streets rights-of-way (whether such rights-of-way are acquired by dedication, purchase, gift or otherwise), including, without limitation, paving or repaving, the installation of utilities or landscaping or the construction of curbs and gutters, construction parking places or facilities or sidewalks.

(C) All activities related to the construction of public streets, parking, landscaping, curbs and gutters, sidewalks or facilities within town rights-of-way (whether acquired by purchase, gift or dedication or otherwise) shall be a permitted use in all zoning districts.

(Ord. 91-08, passed 11-18-91; Am. Ord. 96-10, passed 6-10-96; Am. Ord. 01-02, passed 2-28-01)

ESTABLISHMENT OF ZONING DISTRICT

§ 153.020 ZONES CREATED; ENUMERATED.

In order to regulate and limit the height and size of buildings and determine the areas of open spaces and surrounding buildings and to classify, regulate and restrict the location of trades and businesses and the location of buildings designed for specified business, residential and other uses, the town is divided into zones which shall be known as follows:

(A) Ocean Impact Residential (OIR) Zone;

(B) Low Density Residential (RL) Zone;

(C) High Density Residential (RH) Zone;

(D) Commercial (C) Zone;

(E) Light Industrial Two (LI-2) Zone;

(F) Light Industrial One (LI-1) Zone;

(G) Government and Institutional Public Ownership (G&I - Public) Zone;

~~G.~~ (H) Government and Institutional Zone – Private Ownership (G&I – Private) Zone;

~~(H)~~(I) Maritime Forest Environmental District (MFED).

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

§ 153.021 ZONING MAP ADOPTION.

The boundaries of the zones are shown upon a map titled "Zoning Map, Town of Kill Devil Hills, North Carolina." The zoning map and all notations, references and amendments thereto and other

information shown thereon is made a part of this chapter the same as if such information set forth on the map were fully described and set out in this chapter. The zoning map, properly attested, shall be kept on file in the office of the Town Clerk and shall be available for inspection by the public. Maps may be in paper or a digital format approved by local government.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 08-21, passed 8-11-08)

§ 153.022 ADOPTION OF BOUNDARIES.

The boundaries of the various zones as shown on the Zoning Map are adopted and the provisions of this chapter governing the use of land and buildings, the height of buildings, building site areas, the sizes of yards about buildings and other matters as hereinafter set forth are established and declared to be in effect upon land included within the boundaries of each and every zone shown upon the Zoning Map.

(Am. Ord. 01-02, passed 2-28-01)

§ 153.023 INTERPRETATION OF BOUNDARIES.

Where uncertainty exists as to the boundaries of any zone shown on the Zoning Map, the following rules shall apply:

(A) Where such boundaries are indicated as approximately the following street lines, alley lines and lot lines, such lines shall be construed as boundaries.

(B) In unsubdivided property or where a zone boundary divides a lot, the location of such boundary, unless such boundary is indicated by dimensions, shall be determined by use of the scale appearing on the map.

(C) In case any further uncertainty exists, the Board of Adjustments shall interpret the intent of the map as to location of such boundaries.

(D) Where any street or alley is, after November 30, 1953, officially vacated or abandoned, the regulations applicable to each parcel of abutting property shall apply to the resulting parcel of land which has had added to its original boundaries the area within the abandoned street or alley.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

APPLICATION OF REGULATIONS

§ 153.035 COMPLIANCE WITH ZONE REGULATIONS REQUIRED.

Except as provided in this chapter, no building or structure shall be erected, reconstructed or structurally altered, nor shall any building or land be used which does not comply with all the zone regulations established by this chapter for the zone in which the building or land is located.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

§ 153.036 YARDS, OPEN SPACES, INTENSITY OF USE AND THE LIKE.

The minimum yards and other open spaces including the intensity of use provisions contained in this chapter for each and every building erected or structurally altered after November 30, 1953 shall not be encroached upon or considered as yard or open space requirement or intensity of use requirement for any other building.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

§ 153.037 CONVERSION OF EXISTING STRUCTURE TO CONDOMINIUM OWNERSHIP.

Existing structures not in condominium ownership under the Unit Ownership Act of the State of North Carolina may be converted to unit ownership, provided the owner or developer shall comply with all applicable state codes, including but not limited to fire codes and building codes.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

§ 153.038 AMENDMENTS.

(A) The Board **of Commissioners**, from time to time, on its own motion or upon petition, after public notice and hearing provided by law may amend, supplement, change, modify or repeal the boundaries or regulations in this chapter or subsequently established after submitting the same to the Town Planning Board for its recommendation.

1. Before adopting, amending or repealing any ordinance or development regulations, the governing board shall hold a legislative hearing in accordance with § 153.363 of this chapter.

2. Before adopting or amending a Zoning Map change, the governing board shall hold a legislative hearing in accordance with § 153.363 of this chapter.

3. When adopting or rejecting any zoning text or map amendment, the governing board shall also approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan and reasonableness of the amendment (NCGS § 160D-605).

~~(A)~~ **(B) The Planning Board shall review and comment on all amendments to any zoning ordinance or redevelopment regulations prior to the governing board consideration. The Planning Board may hold legislative hearings as it deems necessary. The Planning Board shall review each proposed amendment to consistency with any comprehensive plan that has been adopted and any other official adopted plan that is applicable. A written recommendation to the governing board that addresses plan consistency as well as a recommendation on the proposed amendment. A recommendation by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners.**

~~(B)~~**(C)** A petition for the reclassification of property or amendments to the text of these regulations or Zoning Map that has been denied in whole or in part, or approved to a classification other than the one originally requested, shall not be resubmitted within two years of the date of the Board of Commissioners' action on the original petition, except as permitted in **this subsection**. However, nothing in this division can be deemed to preclude seeking a lower classification in the hierarchy of zoning districts.

~~(C)~~**(D)** The Board of Commissioners may allow resubmission of the petition within the two-year time frame if it determines that, since the date of action on the prior petition, one or more of the following guidelines have been met:

(1) There has been a similar or more intensive change in the zoning district classification of an adjacent property;

LOW DENSITY RESIDENTIAL ZONES (RL)

§ 153.115 INTENT.

(A) The Low Density Residential (RL) Zone is established as an area in which the principle use of the land is for single-family residences and is intended to preserve and enhance low-to-medium density neighborhoods.

(B) In the RL Zone, buildings or lands shall be used for one or more of the following specified permitted uses or conditional uses and none other.

(Ord. 99-08, passed 5-10-99; Am. Ord. 01-02, passed 2-28-01)

§ 153.116 PERMITTED USES.

In the RL Zone, buildings and/or land shall be used for the following purposes:

- (A) Single-family dwellings;
- (B) Duplex dwellings;
- (C) On-site accessory uses or buildings to divisions (A) or (B) of this section;
- (D) Swimming pools, tennis courts (residential or private);
- (E) Publicly-owned access areas and supporting facilities; publicly-owned recreation parks; privately-owned access areas;
- (F) Home occupations as defined herein;
- (G) Town-owned and leased facilities; and
- (H) Places of worship and accessory uses.

(Am. Ord. 01-02, passed 2-28-01; Am. Ord. 06-02, passed 2-22-06)

§ 153.117 ~~CONDITIONAL~~ SPECIAL USES.

(A) *Playgrounds.* All playgrounds and parks in the RL Zone shall be operated by a governmental entity or nonprofit organization (except daycare centers and private schools) and the sponsoring agency shall provide in writing a maintenance schedule and shall designate those parties who shall be responsible for the periodic maintenance and policing of the grounds and resolution of any conflicts.

(B) Overhead transmission systems in accordance with §§ 153.280 - 153.288, **local authority granted to the Town pursuant to G.S. 160D-932..**

(Ord. 91-08, passed 11-18-91; Am. Ord. 97-05, passed 6-25-97; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 06-20, passed 8-14-06; Am. Ord. 16-18, passed 6-27-18)

§ 153.118 NONCONFORMITIES.

See §§ 153.050*et seq.*

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01)

§ 153.119 BUILDING HEIGHT LIMITS.

5. An ADU must be properly permitted, inspected, and comply with all applicable standards of the N.C. Building Code and Kill Devil Hills Town Code.
6. The owner must obtain a permit from the Dare County Environmental Health Department that the existing wastewater system can accommodate or be improved to accommodate the establishment of an ADU.
7. ADUs shall be parked in accordance with 153.076 Off Street Parking and Loading.
8. Recreational vehicles, travel trailers and/or manufactured homes shall not be used or approved as an ADU.
9. An ADU shall not be subdivided or segregated in ownership from the principal dwelling unit.

(Ord. 17-28, passed 3-8-21)

BOARD OF ADJUSTMENT

§ 153.320 INTENT.

It is the intention of this subchapter that all questions arising in connection with the enforcement of this chapter shall be presented first to the town planner for consideration and that such questions shall be presented to the Board of Adjustment only on appeal from a decision of an administrative official charged with the enforcement of this chapter, and that from the decision of the Board of Adjustment, recourse shall be had to the courts, as provided by law. It is further the intention of this division that appeals from a decision of the Zoning Administrator or other administrative official, related to this chapter but not pertaining to the state building code or state building laws, shall be taken to the Board of Adjustment, and that from the decision of the Board of Adjustment, recourse shall be had to the courts, as provided by law; except that it shall be the duty of the Board of Commissioners to consider any amendments to this chapter, applications ~~for conditional use or~~ special use permits or site plans as provided by this chapter and any other duty not specifically delegated to the Board of Adjustment herein.

(Ord. 13-20, passed 11-13-13)

§ 153.321 DUTIES AND RESPONSIBILITIES OF THE BOARD OF ADJUSTMENT.

(A) *Interpretations.* The Board shall interpret zoning maps and pass upon disputed questions of lot lines or district boundary lines and similar questions that may arise in the administration of this chapter. The Board shall hear and decide all matters referred to it or upon which it is required to pass under this chapter.

(B) *Administrative Review; Appeals.* Pursuant to its powers and duties, the Board of Adjustment shall hear and decide appeals to ~~decisions of administrative officials charged with the enforcement of this chapter~~ administrative decisions where it is alleged there is an error in any order, decision, determination or interpretation made by the Zoning Administrator or such other designated administrative officer in the enforcement of this chapter. As used in this section, the term **DECISION** includes any final and binding order, requirement, or determination.

(C) *Variances.* To authorize upon appeal in specific cases, variances from the terms of the Zoning Code according to the standards and procedures herein so that the spirit of the Code is observed, public safety and welfare secured, and substantial justice done.

(1) The Board of Adjustment may impose appropriate conditions on any variance, provided the conditions are reasonably related to the variance.

(a) A violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be a violation of this chapter.

(2) The variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.

(D) *Chapter 151, Flood Damage Prevention Ordinance.* Pursuant to the terms, conditions and procedures contained in Chapter 151, Flood Damage Prevention Ordinance, the Board of Adjustment shall act as the appeal board and shall hear and decide requests for variances of the provisions of that chapter; and, shall hear appeals and modify or affirm the corrective order issued by the Floodplain Administrator.

(E) The Board of Adjustment shall comply with all the procedures and processes applicable to the board of adjustment hearing appeals in accordance with NCGS § 160D-405 and 406.

(Ord. 13-20, passed 11-13-13)

§ 153.322 APPEALS.

(A) *Appeals procedures.*

(1) An appeal may be initiated by any aggrieved party or by any officer or the Board of Commissioners of the Town of Kill Devil Hills.

(2) The Board of Adjustment shall hear and decide appeals decisions of administrative officials charged with enforcement of the zoning, subdivision or flood damage prevention ordinance, pursuant to all of the following:

(a) Any person who has standing under NCGS § 160D-1402(c) ~~NCGS 160A-393(d)~~, or the town, may appeal a decision to the Board of Adjustment. A written notice of appeal stating the grounds for the appeal must be filed with the Town Clerk.

(b) The official who made the decision must give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice must be delivered by personal delivery, electronic mail, or by first-class mail.

(c) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.

(d) The official who made the decision must transmit to the Board all the documents and exhibits constituting the record upon which the action appealed was taken. The official must also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(e) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed and accrual of any fines, ~~from~~ unless the official who made the decision certifies to the Board of Adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of this chapter. In that case, enforcement

proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board of Adjustment must meet to hear the appeal within 15 days after such request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with this chapter shall not stay the further review of an application for permits or permissions to use such property. In these situations, the appellant may request and the Board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

(f) The Board of Adjustment must hear and decide the appeal within a reasonable time. The Board shall follow quasi-judicial procedures in determining appeals of administrative decisions (NCGS § 160D-406).

(g) Notice of the public evidentiary hearing shall follow procedures outlined in § 153.363. ~~must be mailed to the person or entity whose application is the subject of the hearing; to the owner of the property that is subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land adjoining the property that is the subject of the hearing; and to any other persons entitled to receive notice at least ten days, but not more than 25 days, prior to the hearing for any appeal. For the purpose of applying this standard, an adjoining property is deemed to be any parcel that abuts the subject property or is located directly across a public right-of-way from the subject property. In the absence of evidence to the contrary, the town may rely on Dare County tax listings to determine owners of the property entitled to be mailed notice.~~

~~1. It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact a Kill Devil Hills official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least ten days. Posting of the sign shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the Kill Devil Hills official who made the decision.~~

(h) The official who made the decision must be present at the hearing as a witness.

(i) The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order requirement, decision, or determination that ought to be made. The Board shall have all the powers of the official who made the decision.

(j) When hearing an appeal pursuant to NCGS § 160D-1402 ~~NCGS § 160A-400.9(c)~~ or any other appeal in the nature of certiorari, the hearing shall be based on the record and the scope of review shall be as provided in NCGS § 160D-1402 ~~NCGS § 160A-393(k)~~.

(3) Staff shall transmit to the board all applications, reports and written materials relevant to the matter being considered. Administrative materials shall become part of the hearing record. The applicant, local government, and any person who would have standing to appeal the decision shall have the right to participate as a part of the evidentiary hearing.

(4) Upon voting, the decision shall be made by the majority of the board for appeals.

(3)(5) Standards for granting an appeal.

(a) The Board of Adjustment shall reverse or modify the order, decision, determination, or interpretation under appeal only upon finding an error in the application of these regulations on the part of the officer rendering the order, decision, determination, or interpretation.

(b) In modifying the order, decision, determination, or interpretation, the Board of Adjustment shall have all the powers of the officer from whom the appeal is taken.

(6) Judicial challenge. A person with standing may bring a separate and original civil action to challenge the enforceability, validity, effect or constitutionality of an ordinance or development regulation, or that it is ultra vires, preempted, or otherwise in excess of statutory authority without filing an appeal under this section.

(Ord. 13-20, passed 11-13-13)

§ 153.323 VARIANCES.

(A) Procedures.

(1) A petition for variance may be initiated only by the owner of the affected property, an agent authorized in writing to act on the owner's behalf, or a person having a written contractual interest in the affected property.

(2) When unnecessary hardships would result from carrying out the strict letter of this chapter, the Board of Adjustment shall vary any of the provisions upon a showing of all of the following:

(a) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(b) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

(c) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify granting of a variance shall not be regarded as a self-created hardship.

(d) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved.

1. The Board of Adjustment may impose appropriate conditions on any variance, provided the conditions are reasonably related to the variance, which include, as appropriate, requirements that street and utility rights-of-way be dedicated to the public and that provision be made for recreational space and facilities.

2. A violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be a violation of this chapter.

3. The variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.

(3) *Restrictions.*

(a) Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this chapter in the district involved, or any use expressly or by implication prohibited by the terms of this chapter in the district.

(b) The existence of a non-conforming use of neighboring land, buildings, or structures in the same district, or of permitted or non-conforming uses in other districts, shall not constitute sufficient reason for granting the requested variance.

(c) The fact that property may be utilized more profitably will not be considered adequate to justify the Board of Adjustment in granting a variance.

(4) Notice and public hearing shall follow regulations procedures outlined in §153.363.

~~(a) Notice of the public hearing shall be posted on the subject property at least ten days, but not more than 25 days, in advance of the public hearing at which the Board is to consider the variance. Notice of the public hearing must be mailed to the person or entity whose application is the subject of the hearing; to the owner of the property that is subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land adjoining the property that is subject of the hearing; and to any other persons entitled to receive notice at least ten days, but not more than 25 days, prior to the hearing for any variance. For the purpose of applying this standard, an adjoining property is deemed to be any parcel that abuts the subject property or is located directly across a public right-of-way from the subject property. In the absence of evidence to the contrary, the town may rely on Dare County tax listings to determine owners of the property entitled to be mailed notice.~~

(Ord. 13-20, passed 11-13-13)

§ 153.324 ACTION BY THE BOARD OF ADJUSTMENT.

(A) A concurring vote of four-fifths of the Board members shall be required to grant a variance. The Board may grant the variance as requested, deny the variance, or grant the variance with conditions. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. The Board of Adjustment shall grant or deny the variance or shall reverse, affirm, or modify the order, decision, determination, or interpretation under appeal by recording in the minutes of the meeting the reasons that the Board of Adjustment used and the findings of fact and conclusions of law made by the Board of Adjustment to reach its decision. For purposes of this subsection, vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the Board" for calculation of the requisite supermajority majority if there are no qualified alternates available to take the place of such members.

(B) A member of the Board shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection, as outlined in § 153-364. Conflict of Interest.

(C) *Quasi-judicial decisions.* The Board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent material and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the Chair, or other duly authorized member of the Board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the Board, or such other office or official as the ordinance specifies. The decision of the Board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

(D) *Oaths.* The chair of the Board or any member acting as chair and the clerk to the Board are authorized to administer oaths to witnesses in any matter coming before the Board. Any person who, while under oath during a proceeding before the Board of Adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.

(E) *Subpoenas.* The Board of Adjustment through the chair, or in the chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under [NCGS 160D-406\(g\)](#) ~~NCGS 160A-393(d)~~ may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full Board of Adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board of Adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

(Ord. 13-20, passed 11-13-13)

§ 153.325 EFFECT OF GRANTING OF VARIANCE OR REVERSAL OR MODIFICATION OF ADMINISTRATIVE DECISION.

(A) After the Board of Adjustment approves a variance, or reverses or modifies an order, decision, determination, or interpretation of an administrative officer, the appellant or petitioner shall be responsible for a building permit and/or certificate of occupancy, as applicable, in order to proceed with the development of the subject property. All orders, decisions, determinations, and interpretations made by administrative officers under those procedures shall be consistent with the variance, reversal, or modification granted to the appellant or petitioner by the Board of Adjustment.

(B) *Rehearing.* The Board of Adjustment shall refuse to hear an appeal or variance petition which has been previously denied unless it finds that there have been substantial changes in the conditions or circumstances relating to the matter.

(C) *Appeal from Board of Adjustment.* Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to [NCGS § 160d-406\(k\)](#) ~~NCGS 160A-393~~. A petition for review shall be filed with the Clerk of Superior Court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with § 153.323(C). When first class mail is used to deliver notice, three days shall be added to the time to file the petition.

- (i) Dumpster pad locations;
 - (j) A tabulation of the total number of dwelling units of various types in the project and the overall project density in dwelling units per acre;
 - (k) Uniform street address;
 - (l) Landscaping plan;
 - (m) Lot coverage;
 - (n) Inventory of significant natural features or vegetated areas affecting the site;
 - (o) N.F.I.P. Flood Zone;
 - (p) Boundaries of all AECs; and
 - (q) Sedimentation and erosion control plan.
- (4) Right-of-way improvements shall be made in accordance with the duly adopted written policy, as amended from time to time by the Board of Commissioners, which is on file with the Town Clerk.
- (5) Stormwater management plan and calculations as specified in § 153.070.
- (6) In addition to the building permit, a permit for any construction within the public right-of-way shall be obtained prior to commencing any work.
- (7) Inspections of sites involving public rights-of-way and inspections of any on-site construction shall be made by the town.
- (C) Upon submission of a new structure, moved structure or addition to single-family or duplex dwelling site plans for initial ~~staff~~ administrative review prior to any inspections, the applicant shall have the site plan/building plan prepared, sealed and signed by persons duly authorized by state law as necessary and a survey sealed and signed by a North Carolina licensed surveyor locating the house and all appurtenances on the lot. The site plan shall be submitted with Health Department permits, consent of present recorded owner, and the applicant shall pay all site plan review fees as required by the adopted fee schedule. Two copies of the site building plan stamped by the health department shall be delivered to the Planning Department, who shall distribute to the heads of the Public Services Department and such other town officials and departments as may be appropriate.
- (D) In addition to any other requirements of the Planning Department, the new structures, moved structures and additions to single-family or duplex dwelling site plan shall contain the following information:
- (1) Survey information:
 - (a) Owner(s);
 - (b) Lot number(s), block, subdivision;
 - (c) PIN number and parcel number;
 - (d) Zoning district;
 - (e) Flood zone (ground elevation and first floor elevations);
 - (f) Street address;

(Ord. 92-03, passed 1-22-92; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 03-17, passed 12-8-03; Am. Ord. 07-18, passed 10-24-07; Am. Ord. 11-11, passed 6-13-11; Am. Ord. 13-16, passed 10-14-13; Am. Ord. 14-04, passed 3-10-14)

§ 153.360 VESTING OF RIGHTS AND PERMIT CHOICE.

(A) Rights granted in accordance with the provisions of this chapter shall vest for a period of ~~two~~ one years only upon site plan approval by the Board of Commissioners or administrative approval, excepting site specific vesting plans. This provision is not intended to extend or reduce any time requirements set forth in the North Carolina General Statutes [(NCGS § ~~160A-385(b)(5)~~ **160D-108**], North Carolina Building Code, the town code or any other governmental regulation applicable to the project for which the site plan approval is granted.

(B) Permit Choice. If development regulations change after the time of full application submittal, in accordance with § 153.355, and prior to the time in which the decision is made by the appropriate authority, the applicant may choose which version of the development requirements will apply to the application. [(NCGS § 160D-208(b))]

(C) A site specific vesting plan. A vested right established by a site specific vesting plan shall run for a period of two years from the date of the approval of the development application. For the purposes of this ordinance, a site specific vesting plans shall be as follows:

1. A special use permit approved by the Board of Commissioners.
2. Subdivision final plat approval.

(D) Multi-phase development plan. A multi-phase development plan is vested for a period of seven years from the date of approval by the Board of Commissioners. A multi-phase development plan is vested for the entire development with the zoning and subdivision regulations in place at the time of approval. For the purposes of this subsection, a multi-phase development shall mean a development containing 15 acres or more that is submitted for development approval to occur in more than one phase and is subject to a master development plan with committed elements, including a requirement to offer land for public use as a condition of approval of the master development approval plan. Multi-phase developments shall be subject to approval as special use permits according to § 153.363.

(E) Development agreement as approved by the Kill Devil Hills Board of Commissioners according to the provisions of NCGS § 160D, Article 10.

(F) The procedures for administrative development approval are set forth in §153.363 of this ordinance.

(G) The procedures for final plat approval are established in the Subdivision Ordinance, Chapter 152, of the Kill Devil Hills Code of Ordinances.

(H) The procedures for a special use permit are set forth in §153.363 of this ordinance.

1. Each site-specific vesting plan shall include the information required by Kill Devil Hills for approval as a special use permit.
2. East site-specific vesting plan shall follow the notice and hearing procedures for special use permits.

3. An approved site specific vesting plan and its conditions may be amended with the approval of the applicant and Kill Devil Hills in the same manner as required for the special use permit.

4. The Kill Devil Hills Board of Commissioners may extend the vesting period up to five years following the same notice and hearing procedures used for the original vesting approval upon finding that:

a. The permit (approval) has not yet expired;

b. Conditions have not changed so substantially to warrant a new application;
and

c. The extension is warranted in light of other relevant circumstances as determined by the Board of Commissioners.

5. Following the establishment of a vested right upon the approval of a site specific vesting plan, the Planning Director shall issue a written statement acknowledging the vested right which describes the duration of the vesting plan and other information deemed necessary to administer the vested right.

6. The vested right shall confer upon the landowner the right to undertake and complete the development use of the property as established in the site-specific vesting plan. Failure to comply with the approved terms and conditions of the site-specific vesting plan shall result in a forfeiture of vested rights. A vested right shall attach to and run with the land.

I. Limits of site-specific vesting plans.

1. Nothing in this ordinance shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval of the Kill Devil Hills Zoning Ordinance. The development remains subject to subsequent review and approvals to ensure compliance with the terms and conditions of the original approval.

2. The establishment of a vested right according to the ordinance shall not preclude the application of overlay zoning that imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances that are general in nature and applicable to all property subject to land use regulations by Kill Devil Hills.

3. New and amended zoning regulations that would apply except for the vested right shall become effective upon the expiration or termination of the vested right established by the ordinance.

4. Upon issuance of a building permit, the expiration provisions of NCGS § 160D-1111 and NCGS § 160D-1115 shall apply except that a building permit shall not expire or be revoked because of the running of time while a zoning vested right is outstanding.

5. Any vested right for a site-specific vesting plan is subject to the exceptions set forth in NCGS § 160D-108.1.

6. Notwithstanding any provision of this section, the establishment of a vested right under this section shall not preclude change, or impair the authority of Kill Devil Hills to adopt and enforce development regulation provisions governing non-conforming uses or situations.

7. A sketch plan or document that fails to describe the type and intensity of use for a specific parcel or parcels of land does not constitute a vesting plan. A variance shall not constitute a site-specific vesting plan or a condition of approval to secure a variance constitute a site-specific vesting plan.

(Ord. 98-04, passed 6-22-98; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 01-04, passed 6-27-01; Am. Ord. 02-14, passed 7-24-02)

§ 153.361 PERMIT APPLICATIONS FOR PERMITTED USES.

(A) Single-family detached and duplex residential dwellings.

(1) All applications for building permits shall be accompanied by plans in duplicate, drawn to scale, showing the actual dimensions and shape of the lot to be built upon. The application shall include such other information as may be required by the laws of the United States, the state, the county or this chapter, including:

- (a) Existing or proposed buildings or alterations;
- (b) Existing or proposed uses of the building and land;
- (c) The number of families, housekeeping units or rental units the building is designed to accommodate;
- (d) Conditions existing on the lot; and
- (e) Any other matters which may be necessary to determine conformance with, and provide for, the enforcement of this chapter. Any application and supporting materials may be submitted by the official administering this chapter to the various department supervisors of the town, and those department supervisors shall respond to the submitting official prior to the expiration of the building permit letting period.

(2) One copy of the plans shall be returned to the applicant by the Building Inspector, after the Building Inspector and the Zoning Administrator have marked the copy either as approved or disapproved and attested to the same by their signatures on such copy. The second copy of the plans, similarly marked, shall be retained by the Inspections Department.

(Ord. 91-08, passed 11-18-91)

(B) Multi-family, group development projects, group housing projects and commercial buildings; generally.

(1) Site plans for the uses listed in this section, when listed as permitted uses within a district, must be **approved reviewed** by the Planning Board in accordance with the provisions of this chapter and approved by the Board of Commissioners, including:

- (a) Multi-family residential dwelling containing three or more dwelling units;
- (b) Group development projects consisting of two or more principal buildings devoted to a common or similar use and constructed on a single lot where permitted in the specified districts established by this chapter;
- (c) Apartment buildings;

- (d) Condominiums;
- (e) Townhouses;
- (f) Hotels, motels or motor lodges;
- (g) Business, commercial or industrial buildings;
- (h) Recreation or entertainment parks, centers or structures and night clubs;
- (i) Docks, piers, marinas and all over-the-water structures except private over-the-water piers, boathouses and bulkheads accessory to a single- or two-family private dwelling; and
- (j) All other uses except single-family detached and duplex residential dwellings.

(Ord. 92-03, passed 1-22-92)

~~(C) *Phasing.* Phased projects are considered an unusual circumstance and shall be approved only if deemed in the best interest of the town. Phased approval shall be valid for a period at least two years from the date of approval by the Board of Commissioners. All existing phased projects approval shall be null and void two years from the date of approval of this section. Those projects with a specific expiration date are exempt.~~

(Ord. 91-08, passed 11-18-91)

(Am. Ord. 01-02, passed 2-28-01)

§ 153.362 PERMIT APPLICATIONS FOR CONDITIONAL SPECIAL USES.

(A) *Submission.* Submission of a site plan for **conditional special** use shall be subject to those requirements outlined in § 153.355 through § 153.358. The application shall indicate the section of this chapter under which a permit is being sought and shall contain the information required by the appropriate section and such other information as may be required to insure compliance with this chapter.

(B) *Prerequisite filings.*

(1) Prior to ~~the consideration of an item~~ **review** by the Planning Board and the placing of a site plan upon the agenda of the Planning Board for **consideration comment**, all town department reports and recommendations shall be filed with the Planning Director.

(2) All evidence of applications and all supplementary, nonlocal permits and approvals necessary for the particular project shall be filed with the Planning Director.

(3) On any site containing more than ½ acre, the necessary land disturbing permit shall have been secured, and the plans approved commensurate with local ordinances shall be filed as a part of the application.

(4) If there is any change in the office of the Planning Department, such items shall be filed with the appropriate municipal official prior to the matter being considered and placed on the agenda of the Planning Board.

(C) *Review.* The Planning Board shall review the application for a **conditional special** use permit or other permits submitted in accordance with this procedure and shall refer the application to the department heads and the town officials referred to in § 153.355 for their review. These

department heads and town officials designated by the Board of Commissioners shall submit their recommendation in writing as part of the evidentiary hearing, to the Planning Board. ~~The Planning Board shall review all recommendations as well as the application for a conditional use permit and shall submit its recommendation as to approval or disapproval along with such conditions as it may deem necessary to the Board of Commissioners.~~

(D) *Public hearing and required findings.* Approval process.

(1) A quasi-judicial hearing by the Board of Commissioners will be required for all special use decisions.

~~(2) (4) When it is deemed desirable by~~ The Planning Board may provide preliminary forum for review of quasi-judicial decision, provided that no part of the forum recommendation may be used as a basis for the deciding board. ~~or the Board of Commissioners, a public hearing may be held. Notice shall be given at least 15 days in advance of such public hearing. The owner of the property for which the conditional use is sought or his agent shall be notified by mail. Notice of the hearing shall be posted on such property for at least ten days prior to the public hearing. The cost of giving any such notice shall be paid by the applicant to the Planning Board prior to the Planning Board meeting at which the application is reviewed.~~

(3) The quasi-judicial hearing shall be conducted in accordance with provisions of § 153-363.

~~(2)~~ (4) Any party may appear in person, or by agent or attorney.

~~(3)~~ (5) Before the Board of Commissioners may grant any conditional special use permit, the Board shall make affirmative findings that:

(a) The applicant has met the requirements of this chapter and any other applicable ordinances and state law;

(b) The use will not materially endanger the public health and safety if located where proposed and developed according to the plan as submitted;

(c) The use, as proposed, will not overburden the firefighting capabilities and the municipal water supply capacity of the town as such facilities and capabilities will exist on the completion date of the conditional special use for which application is made.

(E) *Granting conditional special use permits.* In granting any conditional special use permit, the Board of Commissioners may prescribe appropriate conditions and safeguards, including time and deed limitations imposed in conformity with this chapter. Violation of those conditions and safeguards, when made a part of the terms under which the conditional special use permit is granted, shall be considered a violation of this chapter and will be punishable under § 10.99. The Board of Commissioners may prescribe a time limit within which the action for which the conditional special use permit is required shall be begun or completed. Failure to comply within the time limit set shall void the conditional special use permit.

(F) *Approval of conditional special use permits.* The Board of Commissioners may approve permits for conditional special uses in the zoning districts where such conditional special uses are specified by this chapter. Where additional permits are required for group development projects in districts where such development may be allowed, those applications for such permits shall also be processed under the procedures of the subchapter. The Board of Commissioners may impose such

reasonable and appropriate conditions and safeguards upon these conditional special use permits as to insure that the spirit and intent of this chapter is preserved and that such conditional special use will not adversely affect the public interest.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 03-17, passed 12-8-03) Penalty, see § 10.99

§ 153.363 DECISION AND NOTIFICATION PROCEDURES

(A) Administrative

1. Planning Director or designee shall give written notice to the landowner and applicant (if different than owner) of the determination of the development application. The written notice shall be delivered by personal delivery, electronic mail or first-class mail. If delivered by first class mail, the determination shall be deemed received 10 days from date of deposit with the United States Postal Service. Electronic notification shall be deemed received on date sent.

(B) Legislative

1. Shall be reviewed by the Planning Board and Board of Commissioners.

2. Zoning Map Amendments.

a. Zoning map amendment hearing notification shall be mailed via first class mail to the owners of the affected property and all parcels of land abutting that parcel of land at least 10 days but not more than 25 days prior to the hearing.

b. The Town shall prominently post the notice of a zoning map amendment hearing on the site proposed for amendment or an adjacent public street or highway. The notice shall be posted in the same time period as the mailed notices.

c. The Town shall publish the notice of a zoning map amendment hearing once a week for two consecutive weeks not less than 10 days or more than 25 days before the scheduled hearing date.

d. The Town shall post notice of a zoning map amendment hearing on the Kill Devil Hills webpage not less than 10 days or more than 25 days before the scheduled hearing date.

e. Large scale zoning map amendments of 50 lots or greater, shall follow notification procedures as outlined in NCGS § 160D-602(b) ~~601(a)~~ (as amended).

3. Zoning Text Amendments.

a. The Town shall publish the notice of a legislative hearing once a week for two consecutive weeks not less than 10 days or more than 25 days before the scheduled hearing date.

b. The Town shall post notice of a legislative hearing on the Kill Devil Hills webpage not less than 10 days or more than 25 days before the scheduled hearing date.

c. Mailed notification are not required by North Carolina Law.

d. Other notice procedures may be implemented based on the specifics of the request and the number of properties involved in the amendment.

(C) Quasi-judicial (Evidentiary) Hearing

1. Special use permits shall be heard by the Board of Commissioners. The Planning Board shall provide a preliminary forum for review of special use permits.

2. Variances and appeals of administrative decisions shall be heard by the Zoning Board of Adjustment.

3. Certificates of Appropriateness shall be heard by the Historic Landmark omission.

4. Notification of Evidentiary Hearing as listed above.

a. Hearing notification shall be mailed via first class mail to the owners of the affected property and all parcels of land abutting that parcel of land at least 10 days but not more than 25 days prior to the hearing. The Board may continue a hearing that has been convened without further notification. If an evidentiary hearing is set for a given date and a quorum of the Board is not then present, the hearing shall be continued until the next regular Board meeting without further advertisement.

b. The Town shall prominently post the notice of hearing on the site proposed for amendment on an adjacent public street or highway right of way. The notice shall be posted in the same time period as the mailed notices.

c. The Town shall publish the notice of a legislative hearing once a week for two consecutive weeks not less than 10 days or more than 25 days before the scheduled hearing date.

d. The Town shall post notice of a legislative hearing on the Kill Devil Hills webpage not less than 10 days or more than 25 days before the scheduled hearing date.

§ 153.364 CONFLICTS OF INTEREST

(A) Governing Board. Members shall not vote on any legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial and readily identifiable financial impact on the member. A governing board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(B) Appointed Boards. Members of appointed boards shall not vote on any advisory or legislative decisions regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board

member shall not vote on any zoning amendment is a person with whom the member shall a close familial, business, or other associational relationship.

(C) Administrative Staff. No staff member shall make a final decision on an administrative decision required by the Chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact of the staff member, or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, decision shall be assigned to the supervisor of the staff person or such person as may be designated by designated by the development regulation or other ordinance. Not staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this chapter unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the Town.

(D) Quasi-judicial Decisions. A member of any board exercising quasi-judicial function pursuant to this chapter shall not participate in or vote on any quasi-judicial matter in a manner that would violate the affected person's constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter than is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person or financial interest in the outcome of the matter.

(E) Resolution of Objection. If an objection is raised to a board member's participation at or prior to the hearing or vote on the matter, and that member does not recuse himself or herself, the remaining members of the board shall, by majority vote, rule on the objection.

(F) Familial Relationship. For purposes of this section, a close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes step, half, and in-law relationships.

(NCGS § 160D-109)

§ 153.365 ENFORCEMENT

(A) Any work or activity subject to regulations pursuant to this chapter or other applicable local development regulations or any State law delegated to the local government in undertaken in substantial violation of any State to local law, or in a manner that endangers life or property, staff may order that work or activity to be immediately stopped.

(B) When an activity is undertaken in violation of the development regulations adopted pursuant to this chapter or other local development regulations or any State law delegated to the local government for enforcement purposes, a notice of violation can be issued in accordance with § 10.99. Notice of violation may be posted on the property.