Ordinance Number _____

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

Ordinance Number _____

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

ATTACHMENT OB-1C

Historic Landmarks Commission

31.40 Established; membership; terms

31.41 Powers and duties

31.42 Historic landmark designation procedure

31.43 Certificate of appropriateness

31.44 Administrative approval of minor works

31.45 Review criteria

31.46 Certain changes not prohibited

31.47 Enforcement and remedies

31.48 Delay in demolition of landmarks

31.49 Oath of Office

31.50 Conflict of Interest

Board of Adjustment

31.60 Board of Adjustment established

31.61 Composition; attendance; meetings

31.62 Term

31.63 Compensation

31.64 Vacancies

31.65 Removal

31.66 Offices

31.67 Oath of Office

31.68 Conflict of Interest

PLANNING BOARD

§ 31.01 ESTABLISHED; JURISDICTION.

There is established a Board to be known as the Town Planning Board, whose jurisdiction shall include the area within the corporate limits of the town.

(`88 Code, § 15-26)

§ 31.02 MEMBERSHIP; TERMS, VACANCY, ATTENDANCE.

(A) The Planning Board shall be composed of seven members, appointed by the Board of Commissioners, who shall be residents of the town. The members of the Planning Board shall be appointed for terms of one, two and three years, and their terms of office shall be designated at the time of their appointment. The successor members of the Planning Board, after those first serving under this section, shall be appointed for a term of three years. A member may be reappointed upon the expiration of his term. Vacancies occurring in the regular Board membership shall be filled by appointment by the Board of Commissioners.

(B) The Planning Board shall designate its Chairperson and Vice-Chairperson from its membership. The Deputy Town Clerk or designee shall provide secretarial duties for the Planning Board.

(C) The person acting as planning official for the town or Town Planner, by whatever name he may be designated, shall be an ex officio member of the Board in an advisory capacity and shall not be a voting member of the Board.

(D) Faithful attendance at the meetings of the Board is considered a prerequisite for the continuation of membership on the Board. The Board of Commissioners may take action to remove any Planning Board member who misses more than one-third of the meetings during any 12-month period.

(`88 Code, § 15-27) (Ord. passed 12-9-75; Am. Ord. passed 1-8-80; Am. Ord. passed 2-23-82; Am. Ord. passed 12-14-82; Am. Ord. passed 8-31-84; Am. Ord. 90-02, passed 3-12-90; Am. Ord. 93-10, passed 9-13-93; Am. Ord. 07-05, passed 4-9-07; Am. Ord. 10-19, passed 10-11-10; Am. Ord. 15-20, passed 7-11-16)

§ 31.03 OFFICIAL RECORD; MEETINGS; QUORUM; VOTING.

(A) By virtue of the duties assigned to the Planning Board and which may be hereafter assigned to the Planning Board, there shall be an official record kept by the Secretary of the Planning Board as a permanent record for the use and benefit of the public and the applicants appearing before the Board with respect to projects within the town requiring Planning Board approval. Such record shall be a public record and shall be maintained at the Town Clerk's Office.

(B) The Planning Board shall meet at a specific time each month in order that its recommendations may be recorded and forwarded to the next regular meeting of the Board of Commissioners, which presently is set as the second Monday of each month. If the Board of Commissioners changes its meeting schedule, the Planning Board shall adjust its schedule so that its recommendations may be available to the Board of Commissioners at its regular meeting.

(C) There shall be a quorum of at least four members of the Board, and in the event only four are present, it shall take a unanimous vote of the four for official action.

(D) The Chairperson of the Board shall vote only in the event of a tie vote on a specific issue or question.

(`88 Code, § 15-28) (Ord. passed 12-9-75; Am. Ord. passed 1-8-80; Am. Ord. passed 2-23-82; Am. Ord. passed 12-14-82; Am. Ord. passed 8-31-84; Am. Ord. 93-10, passed 9-13-93)

§ 31.04 POWERS AND DUTIES; COMPREHENSIVE PLAN.

(A) The Planning Board shall prepare plans and coordinate the plans of the municipality and those of others so as to bring about a coordinated and harmonious development of the area. The Planning Board is designated as the planning agency for the revision of the zoning code of the town under the authority of G.S. § 160A-387. In addition, the Planning Board is directed and authorized:

(1) To prepare and from time to time amend and revise a comprehensive and coordinated plan for the physical development of the area. The comprehensive plan shall be the Planning Board's recommendations to the Board of Commissioners for the development of the town, including, among other things, the general location, character and extent of streets, bridges, parkways, playgrounds, parks and other public ways, grounds and open spaces; the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power and other purposes; the removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension of any of the foregoing ways, buildings, grounds, open spaces, property, utilities or terminals; and the most desirable pattern of land use within the area;

(2) To establish principles and policies and recommend their adoption to the Board of Commissioners for guiding the action of development in the area. The Planning Board may prepare a capital improvements program and report its recommendations to the Board of Commissioners upon the extent, location and design of all public structures and facilities, on the acquisition and disposal of public properties and on the establishment of building lines, mapped street lines and proposals to change existing street lines in order to insure that the goals of the comprehensive plan are furthered by a coordinated and efficient expenditure of public funds;

(3) To prepare and recommend amendments to existing ordinances promoting orderly development of the area along the lines indicated in the comprehensive plan, including a zoning ordinance and subdivision regulations. The Planning Board may initiate, from time to time, proposals for the amendment of the zoning code and the subdivision regulations based upon its studies and comprehensive plan. In addition, it shall review and make recommendations to the Board of Commissioners concerning all proposed amendments to the zoning code and subdivision regulations;

(4) To determine whether specific proposed developments referred to it by governmental or private agencies in the area conform to the principles and requirements of the comprehensive plan for the area and to make recommendations concerning them;

(5) To keep the Board of Commissioners and the general public informed and advised as to these matters and to make any other recommendations which it sees fit for improving the development of the area. In the development of these suggestions, the Planning Board shall acquire and maintain data and materials to show correlation of past, present and future needs and conditions;

(6) To perform any other duties which may be lawfully assigned to it.

(B) The Planning Board is authorized to appoint such committees and employees and to authorize such expenditures as it may see fit, subject to limitation of funds provided for the Planning Board by the Board of Commissioners in the town's annual budget.

(C) The Planning Board may set up special committees to assist it in the study of specific problems.

(D) **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.**

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

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

31.05 OATH OF OFFICE.

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

31.06 CONFLICT OF INTEREST.

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

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 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;

(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)

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 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 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 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, are 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 outdoor advertising sign shall be erected, altered, restored, moved or demolished on such landmark until after an application for a Certificate of Appropriateness as to exterior features has been submitted to and approved by the Commission. Such a certificate is required to be issued by the Commission prior to the issuance of a building permit or other permit granted for the purposed of construction, altering, moving, or demolishing structures, which certificate may be issued subject to reasonable conditions necessary to carry out the purposes of this subchapter. A Certificate of Appropriateness shall be required whether or not a building or other permit is required.

(2) The State of North Carolina (including its agencies, political subdivisions and instrumentalities), the Town of Kill Devil Hills, and all public utilities shall be required to obtain a Certificate of Appropriateness for construction, alteration, moving or demolition of designated landmarks.

(C) *Application for Certificate of Appropriateness.*

(1) Applications for a Certificate of Appropriateness shall be obtained from the Planning and Inspection Department and when completed, filed with the Zoning Administrator. The application shall be filed two weeks prior to the next regularly scheduled meeting of the Commission. Each application shall be accompanied by sketches, drawings, photographs, specifications, descriptions and other information of sufficient detail to clearly show the proposed exterior alterations, additions, changes or new construction. The names and mailing addresses of property owners filing and/or subject to the application and the addresses of the property within 100 feet on all sides of the property that is the subject of the application must also be filed. No application that does not include the aforementioned information will be accepted.

(2) It shall be the policy of the Commission, in regard to applications involving new construction or extensive alterations and/or additions to existing structures, that a subcommittee of the Commission shall be available to meet with persons involved in planned or pending applications in order to advise them informally at an early stage in the development process

concerning the Commission's guideline, the nature of the area where the proposed project will take place, and other relevant factors. The members of the subcommittee, collectively and individually, shall refrain from any indication of approval or disapproval. Advice or opinions given by a member of the subcommittee at such informal meeting shall not be considered official or binding upon the Commission.

(D) *Action on application.* The Zoning Administrator shall notify, by certified mail, not less than one week prior to the meeting at which the matter is to be heard, the owners of the property within 100 feet on all sides of the subject property. Application for a Certificate of Appropriateness shall be acted upon within 90 days after filing, otherwise the application shall be deemed approved and a certificate shall be issued. An extension of time may be granted by mutual consent of the Commission and the applicant. As part of the review procedures the Commission may view the premises and seek advice, as it may deem necessary under the circumstances. The Commission may hold a public hearing on any application when deemed necessary. The action on an application shall be approval, approval with conditions or denial and the decision of the Commission must be supported by specific findings of fact indicating the extent to which the application is or is not congruous with each special character of the landmark.

(E) *Hearing on application; jurisdiction; appeal.*

(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)

§ 31.45 REVIEW CRITERIA.

(A) No Certificate of Appropriateness shall be granted unless the Commission finds that the application complies with the principles and guidelines adopted by the Commission for review changes. It is the intent of these regulations to insure insofar as possible that construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs, or other significant features of landmarks shall be congruous with the special character of the landmark.

(B) In addition to the principles and guidelines, the following features or elements of design shall be considered in reviewing applications for Certificates of Appropriateness:

(1) Lot coverage, defined as the percentage of the lot area covered by primary structures;

(2) Setbacks, defined as the distances from the lot lines to the building;

(3) Building height;

(4) Spacing of buildings, defined as the distances between adjacent buildings;

(5) Proportion, shape, positioning, location, pattern, sizes and style of all elements of fenestration and entry doors;

(6) Surface materials and textures;

(7) Roof shapes, forms and materials;

(8) Use of regional or local architectural traditions;

(9) General form and proportion of buildings and structures, and the relationship of additions to the main structure;

(10) Expression of architectural detailing;

(11) Orientation of the building to the street;

(12) Scale, determined by the size of the units of construction and architectural details in relation to the human scale and also by the relationship of the building, as to adjoining open space and nearby buildings and structures; maintenance of pedestrian scale;

(13) Proportion of width to height of the total building facade;

(14) Archaeological sites and resources associated with standing structures;

(15) Effect of trees and other landscape elements;

(16) Major landscaping which would impact archaeological sites;

(17) Style, material, size and location of all outdoor advertising signs;

(18) Appurtenant features and fixtures, such as lighting;

(19) Structural condition and soundness;

(20) Walls - Physical ingredients, such as brick, stone or wood walls, wrought iron fences, evergreen landscape masses or combination of these;

(21) Color;

(22) Ground cover or paving;

(23) Significant landscaping, archaeological and natural features.

(C) The Secretary of the Interior's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" shall be the sole principles and guidelines used in reviewing applications of the State of North Carolina for Certificates of Appropriateness.

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

§ 31.46 CERTAIN CHANGES NOT PROHIBITED.

Nothing in this subchapter shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature of a landmark which does not involve a change in design, material, or outer appearance thereof; the ordinary maintenance or repair of streets, sidewalks, pavement markings, street signs or traffic signs; the construction, reconstruction, alteration, restoration or demolition of any such features which the building inspector shall certify is required by the public safety because of an unsafe or dangerous condition. Nothing herein shall

be construed to prevent either maintenance, or in the event of an emergency, the immediate restoration of any existing above ground utility structure without approval by the Commission.

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

§ 31.47 ENFORCEMENT AND REMEDIES.

(A) Compliance with the terms of the Certificate of Appropriateness shall be enforced by the Zoning Administrator. Failure to comply with the certificate issued shall be a violation of the Zoning Code and subject to established procedures and penalties for such violations.

(B) In case a building, structure, site, area or object designated as a landmark is about to be demolished, whether a result of deliberate neglect or otherwise, materially altered, remodeled, removed or destroyed except in compliance with this subchapter, the Board of Commissioners, the Commission or other party aggrieved by such action may institute any appropriate action or proceeding to prevent such unlawful demolition, destruction, material alteration, remodeling or removal, to restrain, correct or abate such violations, or to prevent any illegal act or conduct with respect to such a building or structure.

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

§ 31.48 DELAY IN DEMOLITION OF LANDMARKS.

(A) (1) An application for a Certificate of Appropriateness authorizing the demolition, removal, or destruction of a designated landmark may not be denied except as provided in division (C) below. However, the effective date of such a certificate may be delayed for up to 365 days from the date of approval. The period of delay shall be reduced by the Commission if it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return from such property by virtue of the delay. During the delay period the Commission shall negotiate with the owner in an effort to find a means of preserving the building, structure or site.

(2) If the Commission has voted to recommend the designation of a landmark, and the final designation has not been made by the Board of Commissioners, the demolition or destruction of any building, structure or site on the property of the designated landmark may be delayed by the Commission for up to 180 days or until the Board of Commissioners takes final action on the designation, whichever occurs first.

(B) The Board of Commissioners may enact an ordinance to prevent the demolition by neglect of any designated landmark. Such ordinance shall provide appropriate safeguards to protect property owners from undue hardship.

(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.

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.

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.

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

This amendment to Chapter 31, Boards and Commissions, 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:

_____
Casey C. Varnell
Town Attorney

The undersigned hereby certifies that the foregoing official amendment, designated AN ORDINANCE AMENDING CHAPTER 31, Boards and Commissions was placed in the Kill Devil Hills Town Code Book on the _____day of _____, 2021 at _____ ___.m.

_____
James Michael O'Dell
Deputy Town Clerk