

Director of  
Planning and Inspections  
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Building Inspector  
MARTY SHAW  
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Code Enforcement Officer  
JORDAN BLYTHE



Assistant Director of  
Planning and Inspections  
CAMERON RAY

Senior Planner  
RYAN LANG

Zoning Administrator  
DONNA ELLIOTT

**THE TOWN OF KILL DEVIL HILLS  
NORTH CAROLINA**

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**PLANNING DEPARTMENT**

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December 13, 2021

Memorandum

To: Debbie Diaz, Town Manager

From: Cameron Ray, Assistant Planning Director

Subject: **Special Use Application** — 2003 S. Croatan Hwy in the Commercial Zone — Add Outdoor Dining Activity Area

Enclosed is a Special Use Application submitted by Noosa Beach Grille for an Outdoor Dining Activity Area at 2003 N. Croatan Hwy in the Commercial Zone. The proposed plan calls for an Outdoor Dining Activity Area at the existing Restaurant use, "Noosa Beach Grille", located at 2003 N. Croatan Hwy. The proposed location has been shown on the attached site plan. As you recall, Outdoor Dining Area(s) are listed as a Special Use under 153.177(H) as an accessory to a restaurant use and includes several conditions. These conditions are attached for your convenience. Additionally, attached you will find a commercial site plan application, proposed site plan, and Dare County Health Department Approval.

The Planning Board reviewed this proposal on October 12, 2021 and forwarded it to the Board recommending approval with one condition. Since that time the condition has been addressed.

Staff recommends setting the required public hearing for January 10, 2022.

(H) *Outdoor dining activity area(s)*.

(1) Outdoor dining activity area(s) shall be accessory to restaurant use only, not including drive-in restaurants.

(2) Outdoor dining activity area(s) shall have no scheduled events or activities before 7:00 a.m. nor after 11:00 p.m. on any day. There will be no music or games between 11:00 p.m. and 7:00 a.m.

(3) No cooking or serving utilities including grilles, bars or drink dispensers shall be permitted. All such cooking and serving utilities shall be contained within the principal building.

(4) Lighting and sound (including music or noise) must comply with the Town Code. Signage shall comply with the Town Code, including signs on umbrellas.

(5) The area must be kept clean of litter and maintained in a safe and sanitary condition.

(6) Appropriate waste receptacles with affixed lids shall be provided.

(7) On sides not adjoining the principal building the area designated as outdoor waiting activity area(s) shall be bordered by a minimum four foot high fence, with the exception of elevated, covered decks for which fencing requirements are already in place, and shall be buffered with landscaping as set forth in § [153.073\(F\)\(2\)\(b\)](#).

(8) Outdoor dining activity area(s) may not be roofed or shaded in any way other than standard table umbrellas. Erection of a tent subject to a special use or event permit from the town is not prohibited.

(9) Outdoor dining activity area(s) shall comply with minimum parking requirements for the primary structure as set forth in § [153.076](#).

(10) Outdoor dining activity area(s) must have Health Department approval and meet all aspects of the NC Building Code.

(11) Application for a conditional use permit shall include a standard commercial site plan and a written description of the function of the area including hours of operation, types of games or activities provided and what food and beverages if any may be consumed in the area. Means of compliance with outdoor alcoholic beverage consumption shall be included.

(12) The Planning Board may recommend to the Board of Commissioners, and the Board of Commissioners may impose, any additional conditions that they determine are appropriate to ensure that the off-site effects and any adverse effects to adjoining properties are kept to a minimum.

- (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.** ~~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) (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.

Town of Kill Devil Hills Planning and Inspections  
Commercial Site Plan Review Application\*



**Applicant**

Name: M. Susan Stunorsek  
 Address: 8229 S. Old Oregon Blvd -  
Nags Head, NC 27959  
 Phone: 252.506.6800  
 Fax: 252.715.0393  
 Cell: 252.506.6800

**Property Owner**

Name: Mildura Properties LLC  
 Address: 2003 S Croatan Hwy  
 Phone: \_\_\_\_\_  
 Fax: \_\_\_\_\_  
 Cell: \_\_\_\_\_

**Property Location**

Address: 2003 S. Croatan Hwy  
 Subdivision: \_\_\_\_\_

Lot, Block: 00515000  
 Pin#: ~~252170528~~ 9893131308  
72

Zoning District:  Commercial  LI-1  LI-2  
 Total Lot Size: \_\_\_\_\_ Sq. Ft.

OIR  
 Disturbed Area: \_\_\_\_\_ Sq. Ft.

**Contractor**

Company Name: None  
 Name: \_\_\_\_\_  
 Address: \_\_\_\_\_

License Number: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Cell: \_\_\_\_\_  
 Fax: \_\_\_\_\_

Town Privilege License Number: \_\_\_\_\_

**Construction Information**

Type of Construction: \_\_\_\_\_

- |   |                                     |   |   |  |
|---|-------------------------------------|---|---|--|
| <input type="checkbox"/> Assembly         | <input type="checkbox"/> Business   | <input type="checkbox"/> Educational    | <input type="checkbox"/> Factory/Industrial | <input type="checkbox"/> High Hazard   |
| <input type="checkbox"/> Institutional    | <input type="checkbox"/> Mercantile | <input type="checkbox"/> Residential    | <input type="checkbox"/> Storage            | <input type="checkbox"/> Utility/Misc. |
| <input type="checkbox"/> New Construction | <input type="checkbox"/> Addition   | <input type="checkbox"/> Repair/Replace | <input type="checkbox"/> Remodel            | <input type="checkbox"/> Other: _____  |

**Square Footage Proposed:**

Interior Space: \_\_\_\_\_ Sq. Ft. Covered Deck(s): \_\_\_\_\_ Sq. Ft. Storage: \_\_\_\_\_ Sq. Ft.  
 Garage: \_\_\_\_\_ Sq. Ft. # of Bedrooms: \_\_\_\_\_ # of Open Deck(s): 1  
 Proposed Square Footage: \_\_\_\_\_ + Existing Square Footage: \_\_\_\_\_ = \_\_\_\_\_ Total Sq. Ft.  
 % Impervious Coverage: \_\_\_\_\_ + % Pervious Coverage: \_\_\_\_\_ = \_\_\_\_\_ Total % Coverage  
 # of Parking Spaces: Existing: \_\_\_\_\_ Proposed: \_\_\_\_\_ Total: \_\_\_\_\_  
 Septic Tank Permit #: \_\_\_\_\_ Construction Type: \_\_\_\_\_

Estimated Construction Cost (including labor and materials): None

**Flood Information**

Flood Zone:  VE  AE  X  
 Proposed First Floor Elevation: \_\_\_\_\_

Base Flood Elevation: Town of Kill Devil Hills  
 Sq. Ft Below Base Flood Elevation: \_\_\_\_\_

OCT 26 2021

\*This form is designed as a guide for Commercial Site Plan Review.

Additional plans and information will be required prior to building permits.

Project Description

Conditional use of public ordinances

**Required Site Plan Information Checklist:**

- Permit Application (Completed)
- Site Plan Including the following
  - Submittal Requirements:
    - Vicinity Map
    - 15 Copies of Site Plan & Building Plan Elevations – Front, Side, and Rear
    - Tentative Health Department Approval
    - Site Plan Development Review Fee Paid in Full
  - Existing Conditions:
    - Boundary of Entire Lot
    - Width and Location of Existing Right of Ways
    - Nature, Purpose, Locations, and Size of Existing Easements
    - Iron Pins and Concrete Monuments
    - Scale (1" = 50' Minimum)
    - North Arrow
    - Streets Including Width of Pavement
    - All Underground Utilities, Gas/Propane Below or Above Grade
    - Dare Co. Register of Deeds Map Book/Subdivision Ref.
    - Street Address
    - Present Recorded Owner, Developer, Engineer contacts
    - Adjacent Property Owners, Adj. Use & Zone
    - Corp. of Engineers Report / Wetland Study
    - NFIP Flood Zone (ref: Elevation Datum (NAVD 1988))
    - Minimum, Lot Size indicated
  - Proposed Improvements:
    - Zoning Use Compliance/Setbacks labeled
    - Landscaping Plan / Buffers / Screening (per section 153.073)
    - Lighting Plan - photometric showing point output (section 153.074)
    - Sedimentation & Erosion Control Plan including details
    - Disturbed Areas delineated & areas calculated
    - Location of Sidewalks on the Croatan Highway and Curbs
    - Location of Sewer Facilities and Drain field
    - Proposed Building Type, # of Floors and dimensions, floor area ratio, Height
    - Existing and Finished Grades of Entire Site
    - Storm Water Management Plan including calculations
    - Total Units and Density per Acre (Multi-Family) or floor area ratio (in OIR)
    - Lot Size and Lot Coverage Calculation
    - Utility Plan indicating location & sizes of proposed improvements
    - Water Service Sizing Checklist
    - Layout, Size and Number of Parking Spaces including handicap w/ setbacks (Each Space Numbered)
    - Fire Lane and Driveways
    - Loading Zone (Commercial Sites)
    - Mail Delivery Cluster Sites (Multi-Family)

- Proposed First Floor Elevation
- Dumpster Pad Location
- Proposed Sign Location
- Sight triangle shown
- Commercial Building Plans showing architectural compliance
- Plans to N.C.D.O.T. ( if required)
- NC Engineer/Land Surveyor Seal on Site Plan

\*\*\* The items listed in the Site Plan portion of the above checklist represent information that must be indicated on any site plan submitted for review by the Kill Devil Hills Planning Department, Planning Board, and Board of Commissioners. All of the above required documents shall be submitted on or before the 3rd Tuesday of each month. Upon completion of review, the Planning Board shall transmit its recommendations to the Board of Commissioners. The Board of Commissioners shall review site plans on the second Monday of each month.

Signature of Applicant: MS Stumore (Date) 10.25.21

November 9, 2021

Town of Kill Devil Hills

Cameron Ray  
Assistant Planning Director  
102 Town Hall Drive  
Kill Devil Hills, NC 27948

NOV 09 2021

Planning & Inspections Department

Re: Site Plan Technical Review1 -- Noosa Beach Grille, 2003 S. Croatan Hwy

The following are responses in **bold** to the Planning Staff comments dated November 2, 2021.

Planning-Cameron Ray (252-449-5311)

- Provide directional arrows for drive aisles that access US158. Both are one way due to drive aisle width  
**These are currently existing at the site and have been added to the Site Plan.**
- Provide parking space widths  
**All parking spaces are 10' wide and a typical note has been add to the Site Plan.**
- Provide distance of proposed "Outdoor Dining Activity Area" from western property line. Shall be a minimum of 10' from property line to meet buffer requirements  
**A 10' setback line has been added to the Site Plan and the Proposed Outdoor Dining Activity Area is outside of this setback.**
- Landscaping requirements: Front property line shall meet landscaping requirements. All required plantings shall be on the property, not located within the ROW. Minimum plantings shall be (5) trees and (15) shrubs (150' property line: 1 tree per every 30', 1 shrub per every 10'). Landscaping may be dispersed anywhere along the front property line within the 10' buffer (North and south side of drive aisles currently show no landscaping)  
**The site currently has 5 Hollywood Juniper trees meeting size requirements and 6 Pampas Grass shrubs. 9 additional Pampas Grass shrubs are proposed in the landscape buffer and shown on the Site Plan.**
- Palm tree and Sago Palm shrub are not recommended as they are not native plantings. Recommended to plant native salt/drought tolerant species as shown in Appendix A. (See Appendix A in KDH Town Code)  
**Noted.**
- Revise Note: "2,899 SF enclosure building area". Add existing permitted use "(O) Restaurants".  
**This has been added to the Site Plan.**
- Add note: "Proposed special use for Outdoor Dining Activity Area as an

accessory to existing restaurant complying with all conditions outlined  
153.177 (H)"

**This has been added to the Site Plan.**

- Add note: "Outdoor dining activity area(s) shall have no scheduled events or activities before 7:00 a.m. nor after 11:00 p.m. on any day. There will be no music or games between 11:00 p.m. and 7:00 a.m."

**This has been added to the Site Plan.**

- Revise note: "Fence" to include total height  
**The existing fence is 36" tall and is noted on the site plan.**

*Building Inspector-Marty Shaw/Charles Thuman (252-449-5312)*

- Outdoor dining area entrance gates shall swing outward in the direction of egress  
**The occupant load served by these gates is less than 50 and by NCBC 1010,1.2.1 not required to swing in the direction of travel.**
- Gates must not encroach on egress path from main restaurant.  
**This does not apply. See previous note.**
- Gates shall be equipped with panic hardware  
**The occupant load served by these gates is less than 50 and by NCBC 1010,1.10 not required to have panic hardware.**
- Center exterior foot leading to outside dining area shall be marked "Not an exit". It does not lead people inside existing restaurant to an allowable egress area  
**Noted.**
- Appendix Band life safety plan required  
**An Appendix and life safety plan have been added to the submission.**

*Fire-John Risoldi (252-480-4060)*

- Gates shall swing toward egress travel out of that space.  
**The occupant load served by these gates is less than 50 and by NCBC 1010,1.2.1 not required to swing in the direction of travel.**
- Occupancy Load shall be calculated for that space and the main restaurant as well and posted  
**Occupancy calculations are included on the Appendix B drawing sheet A001.**
- Appendix B required for this space  
**This space has been added to the Life Safety drawing on sheet A001.**
- Drive lanes around the building were designated as fire lanes and it does not show it on the site plan  
**The notes "NO PARKING FIRE LANE" has been added to the Site Plan.**

- If smoking is permitted a non-combustible container shall be installed and kept clean of discarded smoking materials

**Noted.**

Police-Dana Harris (252-449-5337)

- Due to the expected increase in customers they may want to place signage guiding customers leaving to use the back driveway onto Wrightsville Ave. to exit onto Eighth St. This would reduce the risk of collisions on US 158 at their entrances/exits.

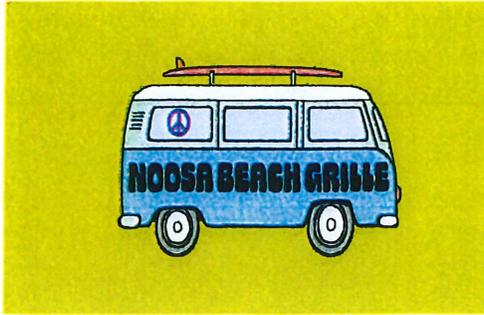
**Noted.**

Please contact me with any comments or questions.

Sincerely,



Mark Kasten, AIA, LEED AP



Oct 26, 2021

Noosa Beach Grille LLC

requests conditional use of our enclosed Patio section  
Patio Open for dining from 11 am- 10 pm 7 days a week.  
Items from both dinner and lunch menus will be served.  
No games or Activities will be permitted  
The following conditions will be followed

(H) *Outdoor dining activity area(s).*

- (1) Outdoor dining activity area(s) shall be accessory to restaurant use only, not including drive-in restaurants.
- (2) Outdoor dining activity area(s) shall have no scheduled events or activities before 7:00 a.m. nor after 11:00 p.m. on any day. There will be no music or games between 11:00 p.m. and 7:00 a.m.
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**Town of Kill Devil Hills**

**OCT 26 2021**

**Planning & Inspections Department**

