TOWN OF KILL DEVIL HILLS

Land Where Flight Began

MEMORANDUM March 7, 2022

TO: Mayor and Board of Commissioners

FROM: Debora P. Diáz, Town Manager

REF: Public Hearing

1. Public Hearing (Attached PH-1)

Notice for the following item has been published in the *Coastland Times*, meeting or exceeding the N.C.G.S. requirements for public hearings, posted on the Town's bulletin boards, website at https://www.kdhnc.com/970/March-7-2022-Board-of-Commissioners-Meet, social media platforms, and has been disseminated through the town's electronic distribution list.

A. Zoning Amendment Request –153.002 Definitions & 153.177(H)(8) Outdoor Dining Activity Area(s): Allow Sail Shade(s)

At its January 18, 2022, meeting, the Planning Board reviewed a zoning amendment from John Kirchmier to amend §153.177(H)(8), to permit sail shades in Outdoor Dining Activity Areas in the Commercial Zone. On February 7, 2022, the BOC scheduled this zoning amendment for public hearing; Staff recommends approval of this amendment. At the conclusion of this public hearing, a motion will be in order to approve, disapprove, or table the amendment for further consideration.

Additionally, a finding must be established by the Board with respect to the change; therefore in the motion to approve or disapprove each amendment, language has been included for the each item below:

> "The Board of Commissioners finds that the amendment to Chapter 153 Zoning, §153.002 Definitions 153.177(H)(8) Outdoor Dining Activity Area(s): Allow Sail Shade(s) is (consistent) (inconsistent) with all comprehensive plans or other officially adopted plans of the Town of Kill Devil Hills that are applicable and that the amendment is (reasonable) (unreasonable) in the public interest because _____ _____."

A motion is in order.

Director of
Planning and Inspections
MEREDITH GUNS

Building Inspector
MARTY SHAW
CHARLES THUMAN

Code Enforcement Officer
JORDAN BLYTHE

THE TOWN OF KILL DEVIL HILLS
NORTH CAROLINA

Assistant Director of
Planning and Inspections
CAMERON RAY

Senior Planner
RYAN LANG

Zoning Administrator
DONNA ELLIOTT

PLANNING DEPARTMENT

February 07, 2022

Memorandum

To: Debbie Diaz, Town Manager

From: Cameron Ray, Assistant Planning Director

Subject: Zoning Amendment Request –153.002 Definitions & 153.177(H)(8) Outdoor Dining Activity Area(s): Allow Sail Shade(s)

Attached is a Zoning Amendment request from John Kirchmier to amend Town Code sections 153.177(H)(8) and staff review comments. The amendment request is to 153.177(H)(8) for allowing sunshade(s) to be used in Outdoor Dining Activity Area(s), which is a Special Use within the Commercial Zoning District. The request would allow for sunshades to be allowed for shading in outdoor dining areas within the building setbacks. Attached you will find the applicants original Zoning Amendment Request.

During Administrative review, staff proposed revisions to the original request. The changes from the original request included; revise name of object to the industry standard "Sail Shade", definition of "Sail Shade", and conditions including lot coverage, height limit, area limit, size limits, NC Building Code compliance, and maintenance requirements. The revisions suggested are important for consistency with interpretation and the conditions listed are to ensure the intent of the ordinance and applicable codes are met. The revisions were presented to the applicant, which he consented to (attached).

On January 18, 2022 the Planning Board recommended approval of the below attached amendment to 153.002 and 153.177(H)(8):

153.002 Definitions

Sail Shade: A flexible fabric membrane tensioned between several anchor points designed to provide shade from the sun's rays. Intended for temporary seasonal use at Outdoor Dining Activity Area(s).

Commercial Zone (C)

153.177 - Special Uses

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

(8) Outdoor dining activity area(s) may not be roofed or shaded in any way other than standard table umbrellas *and sail shade(s).* Erection of a tent subject to a special use or event permit from the town is not prohibited. *Sail shade(s) shall be permitted provided the following conditions are met:*

1. *Shall be located within setbacks*
    2. *Shall be calculated for total lot coverage*
    3. *Height shall not exceed 15 feet*
    4. *No greater than 40% of the approved Outdoor Dining Activity Area can be covered with sail shade(s)*
    5. *Individual sail shade(s) shall not exceed 400 square feet*
    6. *Meet all requirements of the NC Building Code*
    7. Sail shade(s) shall be maintained as designed and if frayed (threadbare, worn, tattered, unraveled, etc) or unsafe the sail shade will be required to be removed, repaired, or replaced

Staff recommends setting the required public hearing for March 07, 2022.

PLANNING BOARD REPORT

Per NCGS 160D-604(b), Zoning Amendments. – Subsequent to initial adoption of a zoning regulation, all proposed amendments to the zoning regulation or zoning map shall be submitted to the planning board for review and comment. If no written report is received from the planning board within 30 days of referral of the amendment to that board, the governing board may act on the amendment without the planning board report. The governing board is not bound by the recommendations, if any, of the planning board.

Per NCGS 160D-604(d), Plan Consistency – When conducting a review of proposed zoning text or map amendments pursuant to this section, the planning board shall advise and comment on whether the proposed action is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The planning board shall provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment 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 governing board. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the planning board statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the recommendation made.

PLANNING BOARD RECOMMENDATIONS

Proposed Amendment Title: Proposed Zoning Amendment—§153.002 Definitions & 153.177(H)(8) Outdoor Dining Activity Area(s): Allow Sail Shade(s)

Approval/Denial: Planning Board finds that the Proposed Zoning Amendment §153.002 Definitions & 153.177(H)(8) Outdoor Dining Activity Area(s): Allow Sail Shade(s) ***is/is not*** consistent with the adopted Land Use Plan.

Therefore, the Planning Board finds the proposed amendment is **consistent/inconsistent** with the objectives and policies contained in the Kill Devil Hills Land Use Plan and/ or other officially adopted plans of the Town that are applicable.

This report reflects the recommendation of the Planning Board with a vote of 5 to 0, this the eighteenth day of January, 2022.

Attest:

Planning Board ~~Chairman~~ VICE CHAIRMAN

Secretary of Planning Board

Ordinance Number _____

AN ORDINANCE AMENDING THE KILL DEVIL HILLS TOWN CODE,
CHAPTER 153, ZONING

BE IT HEREBY ORDAINED BY THE Kill Devil Hills Board of Commissioners that Chapter 153, Zoning, 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:

§ 153.022 DEFINITIONS.

SAIL SHADE. A flexible fabric membrane tensioned between several anchor points designed to provide shade from the sun's rays. Intended for temporary seasonal use at Outdoor Dining Activity Area(s).

COMMERCIAL ZONE (C)

§ 153.177 SPECIAL USES.

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

(8) Outdoor dining activity area(s) may not be roofed or shaded in any way other than standard table umbrellas and sail shade(s). Erection of a tent subject to a special use or event permit from the town is not prohibited. Sail shade(s) shall be permitted provided the following conditions are met:

(a) Shall be located within setbacks

(b) Shall be calculated for total lot coverage

(c) Height shall not exceed 15 feet

(d) No greater than 40% of the approved Outdoor Dining Activity Area can be covered with sail shade(s)

(e) Individual sail shade(s) shall not exceed 400 square feet

(f) Meet all requirements of the NC Building Code

(g) Sail shade(s) shall be maintained as designed and if frayed (threadbare, worn, tattered, unraveled, etc.) or unsafe, the sail shade will be required to be removed, repaired, or replaced

This amendment to Chapter 153, Zoning, shall be in full force and effect from and after the _____ day of _____, 2022. Adopted and approved by the Board of Commissioners of the Town of Kill Devil Hills at a regular meeting held on the _____ day of _____, 2022, by a vote of _____ in favor and _____ opposed.

SEAL

_____
Ben Sproul
Mayor

ATTEST:

_____
James Michael O'Dell
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 153, ZONING, was placed in the Kill Devil Hills Town Code Book on the _____day of _____, 2022 at _____ ___.m.

_____
James Michael O'Dell
Town Clerk

Kill Devil Hills
Zoning Amendment Application
Chapter 153 Zoning

Name of Applicant: John Kirchmier

Address of Applicant: 1200 S. VA. DARE TRL

Telephone Number: 252-480-1010 | 252-202-1049 (C)

Agent for Applicant (if applicable): _____

Agent Address: _____

Telephone Number: _____

I hereby request an amendment to the following specific section of the Zoning Ordinance: 153.177

CONDITIONAL USES COMMERCIAL ZONE

Proposed language for zoning amendment: OUTDOOR DINING ACTIVITIES MAY NOT BE ROOFED OR SHADED IN ANY WAY OTHER THAN STANDARD TABLE UMBRELLAS AND SUNSHADES WITHIN SET BACKS

Justification for Amendment: LABOR SHORTAGES. SUNSHADES ARE SAFER THAN UMBRELLAS DUE TO WIND

A $250.00 non-refundable application fee is due and payable to the Town of Kill Devil Hills.

Signature of Applicant/Agent: _____

Town of Kill Devil Hills

Staff Only:

Date Received: _____

Received by: 12/16/21

DEC 16 2021

Planning & Inspections Department

Ray, Cameron

From: Bonzer Shack <info@bonzershack.com>
Sent: Thursday, January 13, 2022 2:06 PM
To: Ray, Cameron
Subject: Re: Zoning Amendment Request - Proposed Staff Revisions

Looks good to me. Thanks for all the help.

Sent from my iPhone

On Jan 13, 2022, at 13:57, Ray, Cameron <Cameron@kdhnc.com> wrote:

Good Afternoon John,

As discussed earlier, please see below for staff proposed revisions to your submitted Zoning Amendment Request;

153.002 Definitions
Sail Shade: A flexible fabric membrane tensioned between several anchor points designed to provide shade from the sun's rays. Intended for temporary seasonal use at Outdoor Dining Activity Area(s).
Commercial Zone (C)
153.177 - Special Uses
(H) *Outdoor dining activity area(s).*
(8) Outdoor dining activity area(s) may not be roofed or shaded in any way other than standard table umbrellas *and sail shade(s).* Erection of a tent subject to a special use or event permit from the town is not prohibited. *Sail shade(s) shall be permitted provided the following conditions are met:*

1. *Shall be located within setbacks*
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3. *Height shall not exceed 15 feet*
4. *No greater than 40% of the approved Outdoor Dining Activity Area can be covered with sail shade(s)*
5. *Individual sail shade(s) shall not exceed 400 square feet*
6. *Meet all requirements of the NC Building Code*
7. Sail shade(s) shall be maintained as designed and if frayed (threadbare, worn, tattered, unraveled, etc) or unsafe the sail shade will be required to be removed, repaired, or replaced

Please review and let me know your thoughts or concerns.

Sincerely,

Cameron Ray, CFM
Assistant Planning Director
PO Box 1719
Kill Devil Hills, NC 27948

Ray, Cameron

From: Dail, Derek
Sent: Friday, January 7, 2022 3:28 PM
To: Ray, Cameron; Albright, Steve; Elliott, Donna; Guns, Meredith; Lang, Ryan
Subject: RE: Zoning Amendment Request - Outdoor Dining Activity Area(s): Allow Sunshade(s)

Public Services has no comment.

From: Ray, Cameron
Sent: Wednesday, January 5, 2022 10:54 AM
To: Albright, Steve <Steve@kdhnc.com>; Dail, Derek <derek@kdhnc.com>; Elliott, Donna <DONNA@kdhnc.com>; Guns, Meredith <MEREDITH@kdhnc.com>; Lang, Ryan <rlang@kdhnc.com>; Harris, Dana <dharris@kdhnc.com>; Risoldi, John <JOHNR@kdhnc.com>; Thuman, Charles <charles@kdhnc.com>; Shaw, Marty <marty@kdhnc.com>
Subject: Zoning Amendment Request - Outdoor Dining Activity Area(s): Allow Sunshade(s)
Importance: High

Good Morning All,

Attached is a **Zoning Amendment Request** by John Kirchmier to 153.177(H)(8). This Zoning Amendment Request would allow for Sunshade(s) to be used in Outdoor Dining Activity Area(s) within the building setbacks. Currently, the only shading allowed in Outdoor Dining Activity Area(s) is table umbrellas. Below you will see the current regulations for 153.177(H) Commercial Zone Special Use Outdoor Dining Activity Area(s) and the requested amendment *underlined*:

(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 *and sunshades within setbacks*. 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.

Ray, Cameron

From: Elliott, Donna
Sent: Wednesday, January 5, 2022 3:15 PM
To: Ray, Cameron
Subject: RE: Zoning Amendment Request - Outdoor Dining Activity Area(s): Allow Sunshade(s)

I think a definition of "sunshade" should be added to the definition section of the ordinance.

From: Ray, Cameron
Sent: Wednesday, January 5, 2022 10:54 AM
To: Albright, Steve <Steve@kdhnc.com>; Dail, Derek <derek@kdhnc.com>; Elliott, Donna <DONNA@kdhnc.com>; Guns, Meredith <MEREDITH@kdhnc.com>; Lang, Ryan <rlang@kdhnc.com>; Harris, Dana <dharris@kdhnc.com>; Risoldi, John <JOHNR@kdhnc.com>; Thuman, Charles <charles@kdhnc.com>; Shaw, Marty <marty@kdhnc.com>
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Ray, Cameron

From: Thuman, Charles
Sent: Wednesday, January 5, 2022 11:40 AM
To: Ray, Cameron
Subject: RE: Zoning Amendment Request - Outdoor Dining Activity Area(s): Allow Sunshade(s)

Cameron
My only comment is, maybe there should be language that states the sunshades shall be removed at a certain timeframe prior to landfall of a named storm or predicted periods of winds over a given MPH.

Charles Thuman
Building Inspector
Town of Kill Devil Hills
102 Townhall Drive
Kill Devil Hills, NC 27948
252-449-5312
252-441-4102 (Fax)
www.kdhnc.com

From: Ray, Cameron
Sent: Wednesday, January 5, 2022 10:54 AM
To: Albright, Steve <Steve@kdhnc.com>; Dail, Derek <derek@kdhnc.com>; Elliott, Donna <DONNA@kdhnc.com>; Guns, Meredith <MEREDITH@kdhnc.com>; Lang, Ryan <rlang@kdhnc.com>; Harris, Dana <dharris@kdhnc.com>; Risoldi, John <JOHNR@kdhnc.com>; Thuman, Charles <charles@kdhnc.com>; Shaw, Marty <marty@kdhnc.com>
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Ray, Cameron

From: Shaw, Marty
Sent: Wednesday, January 5, 2022 11:36 AM
To: Ray, Cameron
Subject: RE: Zoning Amendment Request - Outdoor Dining Activity Area(s): Allow Sunshade(s)

Per NCBC Section 3102, and specifically 3102.1.1, Tensile membrane structures erected for longer than 180 days *SHALL BE DESIGNED* and constructed in accordance with ASCE 55 (engineered drawings required). Temporary structures of less than 180 days would only be required to meet the requirements of the Fire Code and subject to review by the Fire Marshall.

Marty Shaw
Building Inspector
Town of Kill Devil Hills
102 Town Hall Drive
Kill Devil Hills, NC 27948
252-449-5313
252-441-4102 (f)
marty@kdhnc.com

From: Ray, Cameron
Sent: Wednesday, January 5, 2022 10:54 AM
To: Albright, Steve <Steve@kdhnc.com>; Dail, Derek <derek@kdhnc.com>; Elliott, Donna <DONNA@kdhnc.com>; Guns, Meredith <MEREDITH@kdhnc.com>; Lang, Ryan <rlang@kdhnc.com>; Harris, Dana <dharris@kdhnc.com>; Risoldi, John <JOHNR@kdhnc.com>; Thuman, Charles <charles@kdhnc.com>; Shaw, Marty <marty@kdhnc.com>
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Ray, Cameron

From: Harris, Dana
Sent: Wednesday, January 5, 2022 11:16 AM
To: Ray, Cameron
Subject: FW: Zoning Amendment Request - Outdoor Dining Activity Area(s): Allow Sunshade(s)
Attachments: ZA_Sunshades.pdf

Importance: High

Cameron,

I do not see anything that would adversely affect the Police Department responsibilities/safety as long as side petitions that may be used to block the Sun don't block the view of what is occurring when Police may have to approach. I will leave the construction and safety of sunshades to the engineers. Maybe include definition of "sunshades" that are to be allowed.

Thanks

Dana

From: Ray, Cameron
Sent: Wednesday, January 5, 2022 10:54 AM
To: Albright, Steve <Steve@kdhnc.com>; Dail, Derek <derek@kdhnc.com>; Elliott, Donna <DONNA@kdhnc.com>; Guns, Meredith <MEREDITH@kdhnc.com>; Lang, Ryan <rlang@kdhnc.com>; Harris, Dana <dharris@kdhnc.com>; Risoldi, John <JOHNR@kdhnc.com>; Thuman, Charles <charles@kdhnc.com>; Shaw, Marty <marty@kdhnc.com>
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