TOWN OF KILL DEVIL HILLS

Land Where Flight Began

MEMORANDUM May 25, 2022

TO: Mayor and Board of Commissioners

FROM: Debora P. Diáz, Town Manager

REF: New Business

1. Non-charitable special event – Muse OBX (Attached NB-1)

The Town has received a Special Event Permit Application from Muse Originals/Ami Hill (dba Bus252) for a non-charitable event to be held at Outer Banks Brewing Station, 600 South Croatan Highway. The proposed Bus252 event is requested for every Monday from 5:00 p.m. to 9:00 p.m., June 6 to September 6, 2022.

Updated in 2019, the Town's Chapter 111: Special Events – Charitable Events defines charitable and non-charitable special events. Under §111.01, non-charitable special events are defined as follows:

> "Event(s) operated solely for the purpose of providing a venue for itinerant vendors to sell or offer for sale articles of merchandise, food, or beverage."

The Planning Department's attached memorandum details that the application is for a non-charitable event, which is a prohibited activity under §111.03(C), unless approved by the Board of Commissioners. However, as noted, in the application, as presented, this vendor is not part of a special event; it is only an itinerant vendor.

Staff has detailed its concerns regarding the application, which includes:

- an incomplete application that does not provide information on safety precautions, traffic and parking control, a description of a proposed event, and written permission of the property owner;
- the location's Outdoor Dining Activity Area is a special use, which does not permit retail sales;
- required business parking limitations; and
- Fire Department concerns about fire lane blocking and overcrowding within the structure.

Planning's memorandum notes that with the 2019 update, the BOC established commercial yard sales under §111.04(B) and outlines the requirements for vendors when using this flexible option.

Staff recommends denial of the application because it does not meet the minimum application requirements, and the activity is not part of a special event. Staff also recommends the applicant consider working with this commercial establishment or another and apply for a commercial yard sale permit.

A motion will be 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

May 25, 2022

Memorandum

To: Debbie Diaz, Town Manager

From: Cameron Ray, Assistant Planning Director

Subject: Non-Charitable Special Event Request – 600 S. Croatan Highway

Attached is a Special Event Permit Application for a non-charitable event at 600 S. Croatan Highway, Outer Banks Brewing Station by Muse Originals/Ami Hill. The application proposes a non-charitable event with Bus252 every Monday from 5PM to 9PM from June 06, 2022 to September 06, 2022 with an estimated 75 attendees for each event.

As you recall, non-charitable special events are a prohibited activity unless approved by the Board of Commissioners (§111.03(C)). A non-charitable special event is considered events operated solely for the purpose of providing a venue for itinerant vendors to sell or offer the sale for articles of merchandise, food or beverage. As presented, the attached application is not a special event, rather it falls under the definition of an itinerant vendor, which is prohibited unless part of a special event.

Staff has the following comments/concerns regarding the application:

General:

- Incomplete application submitted. The following items are missing:
  - Crowd control procedures
  - Traffic and parking control
  - Impact of event
  - Safety precautions
  - Emergency medical services/first aid
  - Solid waste collection and disposal means
  - How the site will be returned to its pre-event condition.
  - Written permission from land owner
  - Sketch of lay-out of the proposed event
  - Written description of the proposed event.
- Outdoor Dining Activity Area(s): The OBBS "yard" is an approved area for an "Outdoor Dining Activity Area" and is a special use within the Commercial Zoning District. The special use regulations do not allow for retail sales.
- Required Parking: The OBBS parking spaces are required spaces for the restaurant use and the Outdoor Dining Area. Per the KDH Zoning Ordinance required parking spaces are only to be used for

parking, not any other use. The required parking spaces also abut a drive aisle, which is a safety concern for pedestrians who would be shopping.

- *Fire:*
    - Do not block fire lanes and do not overcrowd the building.

To provide some background: Chapter 111 – Special Events was updated by the Board of Commissioners in 2019 to create more flexibility for events in Kill Devil Hills. The update was a culmination of several meeting with the intent to allow more flexibility for festivals and events in Kill Devil Hills. The ordinance maintained that itinerant vendors were prohibited unless part of a special event (111.03). One itinerant vendor (as applied for) to sell merchandise weekly at a location throughout the summer months is not part of a special event and does not meet the intent of the ordinance. However, as part of the revision, the Board of Commissioners did add "commercial yard sales" as an exempt activity. The commercial yard sale regulations allow for a commercial site to hold 4 yard sales per year, using up to 10% of the required parking area for no more than five (5) consecutive days. The applicant may be better suited to apply for a "commercial yard sale" with owner consent. A copy of Chapter 111 is attached for your convenience.

Staff recommends denial of the application because the application does not meet the minimum application requirements and is not part of a special event. Additionally, Staff recommends the applicant work with the commercial establishment and apply for a commercial yard sale permit.

Town of Kill Devil Hills
Special Event Permit Application

Applicant

Name: Muse Originals/ Ami Hill

Address: 207 E Arch St KDH

Phone: (252)256-2091

Fax:

Cell:

Property Owner

Name: Tina Mackenzie

Address: 600 S Croatan Hwy KDH

Phone: (252) 202-1880

Fax:

Cell:

Event Location

Address: 600 S Croatan Hwy KDH

Event Date & Time

Date(s): Mondays from June 6 to Sept 6, 2022

Hours: 5 to 9p

Estimated Number of Attendees (including Spectators): 75

Non-Profit Organization event is being held for: NONE

Event Activities and General Description:

pop up art show with Bus252

Please provide information as to how the following will be addressed:

(a) Crowd control procedures restaurant occupancy will be adhered to.

(b) Traffic and parking control (permission to use proposed parking areas) OBBS loves hosting the Muse Markets.

(c) Impact of the performance or event on existing parking areas, streets, highways and the burden placed upon public agencies for traffic and crowd security and control N\A

(d) Effects of such performance or event on fire control and fire prevention, including safety precautions N/A

(e) Provisions for emergency medical services and first aid N/A

(f) Provisions for collection and disposal of solid wastes, including trash and garbage, and sanitary provisions, including human waste collection and disposal and the providing of sanitary facilities N/A

(g) Provisions for returning the site to its pre-event conditions, including but not limited to the removal of all debris and trash immediately after the event N/A

(h) The square footage, type, and location of temporary signage one windfeather and 5 coroplast 18x24 signs day of the event.

Please attach the following:

1. A certificate of health inspection, or letter of exemption, from the Dare County Health Department with respect to any food products prepared by any food operation required to be licensed. Sanitary facilities must be provided as required by the Dare County Health Department and the North Carolina Building Code

2. Written permission from the land owner(s) where the event or event parking will be located.

3. Sketch of the lay-out of the proposed event.

4. Written description of the proposed event, including but not limited to the location.

Staff Use Only:
Received By: Rec Date: 5/3/22 Fee: N/A

CHAPTER 111: SPECIAL EVENTS – CHARITABLE EVENTS

Section

111.01 Definitions

111.02 Administration and enforcement

111.03 Prohibited activities

111.04 Exempt activities

111.05 Regulation of charitable special events

111.06 Additional regulations for charitable events with for-profit itinerant vendors

111.07 Special events on the beach

111.08 Permit requirements and application

111.09 Application review

111.10 Permit issuance and revocation

111.11 Permit not grounds for other violations

111.12 Permit appeal

111.13 Disclaimer of liability

111.14 Payment of actual costs required

§ 111.01 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply unless the context indicates or requires a different meaning.

ARTICLES OF MERCHANDISE. Anything of value offered for sale or solicitation to the public by any person.

CHARITABLE SPECIAL EVENTS. Any indoor or outdoor event, fair, carnival, festival, musical concert, sporting competition or contest, conducted, organized, coordinated or otherwise held by an organization, on public or private land, from which 100% of the profits realized by the permittee and vendors, after expenses, shall be donated to an organization that is recognized as tax-exempt and non-profit, under the provisions of the United States Internal Revenue Code.

ITINERANT VENDOR. Any person utilizing any cart, table, equipment, tent, or other apparatus, which is stationary, designed and intended so as to not be a permanent fixture on a lot, and which a cart, table, tent, equipment or other apparatus is used for the retail sale, display, and/or accessory advertising of merchandise or food.

NON-CHARITABLE SPECIAL EVENT(S). Event(s) operated solely for the purpose of providing a venue for itinerant vendors to sell or offer for sale articles of merchandise, food or beverage.

PEDDLER. Any person selling, offering for sale, or soliciting orders for goods, food or services or distributing, disseminating, or gathering information by written or spoken word upon the streets, sidewalks, multi-use paths, town-owned property, town-owned parking areas, public beaches or alleys of the city, or by going from place to place whether by foot or by other means of transportation.

PEDDLING. The sale, offering for sale, or distribution of any articles of merchandise or advertisement from house to house, person to person or upon personal property by any person or persons from a cart, truck, automobile, by foot or by other device operated over and upon the streets and highways, sidewalks, multi-use paths, town-owned property, town-owned parking areas, public beaches, or alleys of the town.

(Ord. 98-07, passed 8-10-98; Am. Ord. 03-14, passed 7-14-03; Am. Ord. 05-03, passed 3-17-05; Am. Ord. 09-13, passed 8-10-09; Am. Ord. 12-03, passed 3-12-12; Am. Ord. 13-13, passed 9-9-13; Am. Ord. 17-5, passed 7-10-19)

§ 111.02 ADMINISTRATION AND ENFORCEMENT.

The Zoning Administrator or designee will administer and enforce the rules and regulations of this chapter and authorize issuance of a permit in cooperation with the Chief of Police, Fire Chief, Public Services Director or their designee and any other affected departments including Buildings and Grounds and Ocean Rescue. A copy of the approved application will remain on file with the Planning and Inspections Department for a period of three years.

(Ord. 98-07, passed 8-10-98; Am. Ord. 03-14, passed 7-14-03; Am. Ord. 05-03, passed 3-17-05; Am. Ord. 12-03, passed 3-12-12; Am. Ord. 17-5, passed 7-10-19)

§ 111.03 PROHIBITED ACTIVITIES.

The following activities, as defined in § 111.01, shall be prohibited:

(A) Itinerant vendors, except as part of an approved special event;

(B) Peddlers and/or the act of peddling;

(C) Non-charitable special events unless approved by the Board of Commissioners.

(Ord. 03-14, passed 7-14-03; Am. Ord. 05-03, passed 3-17-05; Am. Ord. 12-03, passed 3-12-12; Am. Ord. 17-5, passed 7-10-19)

§ 111.04 EXEMPT ACTIVITIES.

The following itinerant vendors, groups, and special events may be permitted:

(A) Residential yard sales, provided that no residence shall conduct such sales on more than four separate days during any calendar year;

(B) Commercial yard sales for outdoor sales of commercial products at an approved commercial establishment meeting the following criteria:

(1) No more than four events per 12-month period;

(2) Ten percent of required parking can be used for merchandise sales;

(3) No longer than five consecutive days;

(4) Not within any state or local right-of-way or easement;

(5) Signage as allowed in § 111.05(H)(1);

(6) Approval of commercial yard sale application by the Planning and Inspection Department.

(C) Town-sponsored events and any events located on county property within the Government and Institutional - Public Zoning District.

(Ord. 03-14, passed 7-14-03; Am. Ord. 05-03, passed 3-17-05; Am. Ord. 12-03, passed 3-12-12; Am. Ord. 13-13, passed 9-9-13; Am. Ord. 17-5, passed 7-10-19)

§ 111.05 REGULATION OF CHARITABLE SPECIAL EVENTS.

Those charitable special events defined in this chapter may operate in the town year round, subject to the regulations set out in this chapter and:

(A) The charitable special event shall comply at all times with all local, state and federal laws.

(B) Charitable special events shall be allowed for no more than three consecutive days and be limited to the hours of 6:00 a.m. until 9:00 p.m.

(C) No special event or itinerant vendor shall leave any location without picking up, removing, and disposing of all trash and other refuse created by, or during the special event, or any related business activity.

(D) All charitable special events must obtain written permission from the property owner/operator on which the event or itinerant vendor(s) will be situated prior to the event.

(E) Tents, structures, and/or apparatus planned, designed and erected for purposes of providing temporary shade and cover shall comply with the North Carolina Fire and Building Codes, and shall not be erected for longer than the duration of the event, which shall correspond to the issued permit.

(F) No special event shall solicit or conduct business with persons operating motor vehicles.

(G) No charitable special event shall be held on or within any public street or highway right-of-way except approved race/parade events.

(H) *Signage.*

(1) Temporary on-site signage, as follows:

(a) The total amount of temporary signage for any charitable special event shall not exceed 100 square feet in area. Such signage may be in a single sign or a combination of signs.

(b) Each itinerant vendor within the charitable special event shall be allowed temporary signage not to exceed 36 square feet per each itinerant vendor.

(c) All temporary signs shall be located within the boundaries of the area in which the event will be held.

(d) Temporary signs may be displayed 24 hours prior to the event and shall be promptly removed by the permittee within 24 hours of the conclusion of the event.

(e) Temporary signs shall not be located in a manner that impedes the movement of pedestrians or emergency response vehicles on the beach.

(f) Temporary signs shall be placed as to not blow over or cause a nuisance or become litter.

(2) Off-site temporary directional signage, as follows:

(a) Not more than two off-site temporary directional signs shall be allowed for any charitable special event.

(b) No directional sign shall exceed 36 square feet for any charitable special event, and shall not be erected more than one week prior to the permitted event and shall be removed within 24 hours of the conclusion of the permitted event.

(c) No signage shall be located within a sight triangle.

(I) *Parking.* Event site may use up to 10% of the required parking for a commercial establishment for a special event. If using more than 10% of the required parking, the establishment will be required to close for regular business during the event.

(Ord. 03-14, passed 7-14-03; Am. Ord. 05-03, passed 3-17-05; Am. Ord. 12-03, passed 3-12-12; Am. Ord. 13-13, passed 9-9-13; Am. Ord. 17-5, passed 7-10-19)

§ 111.06 ADDITIONAL REGULATIONS FOR CHARITABLE EVENTS WITH FOR-PROFIT ITINERANT VENDORS.

Charitable events with itinerant vendors not donating proceeds to a charitable organization or for-profit itinerant vendors are permitted between September 30 through May 1 and subject to the requirements of § 111.05 and itinerant vendors shall be allowed as part of the event subject to the following provisions:

(A) (1) No more than 20 itinerant vendors per event;

(2) The permittee shall provide a list of itinerant vendors at the time of application and the permit application shall include a depiction of each itinerant vendor's location on the physical site of the event.

(B) The permittee shall be required to donate 100% of the profits realized, after expenses, to a charitable organization that is recognized as tax-exempt and non-profit under the United States Internal Revenue Code. The permittee shall provide the town with an accounting of the event within ten days after the conclusion of the event including the name(s) of the organization receiving the donation(s).

(Ord. 17-5, passed 7-10-19)

§ 111.07 SPECIAL EVENTS ON THE BEACH.

Charitable events occurring on the beach or dry sand area between the high water mark and the first line of stable natural vegetation shall meet all of the requirements in § 111.05 in addition to the following:

(A) No event shall block any portion of the beach or beach access for emergency personnel and lifeguard services. No apparatus, equipment or personal belongings including but not limited to umbrellas, tents or canopies shall be placed in such a manner as to obstruct the site line required for a lifeguard to perform his or her duties.

(B) No more than 300 linear feet of dry beach parallel to the shoreline shall be used per event unless approved by the Board of Commissioners at a public meeting. This restriction shall not apply in the water.

(C) No itinerant vendors or rentals shall be permitted.

(D) No physical structures, materials or apparatus shall be permitted on the beach or dry sand beach area overnight (9:00 p.m. until 6:00 a.m.).

(E) No live music.

(F) No driving on the beach except as permitted by the Town Code.

(Ord. 17-5, passed 7-10-19)

§ 111.08 PERMIT REQUIREMENTS AND APPLICATION.

(A) *Requirements.* No permittee shall conduct business nor shall any special event be advertised, conducted, organized, coordinated, or otherwise held until such time as a permit is applied for and issued by the town in accordance with this chapter. Except as otherwise provided, such permit shall be valid only for a period of seven consecutive days. No permit will be issued for the same sponsor (charity), or more than four times in 12 consecutive months. All itinerant vendor operations and/or special events shall be either within the applicant's property or within property upon which the applicant has written permission from the owner to use.

(B) *Permit application; charitable special events.* Any person, group or organization sponsoring a charitable special event shall submit a permit application to the Zoning Administrator or designee. The application shall provide the following minimum required information:

(1) The name, address of the applicant, person, group or organization applying for the permit and/or sponsoring the special event in whose name the permit may be issued;

(2) A written description of the proposed business activity including, but not limited to, the location of the proposed charitable special event;

(3) A written description or photograph of any stand to be used in connection with the business;

(4) A designation, by reference to identifiable landmarks, on a site sketch, describing the approximate area in which such event will be contained, such are to include that required for parking for the special event, tent(s), and any other related activities;

(5) An estimate of the anticipated attendance of both participants and spectators;

(6) Written permission from the land/business owner(s) to hold the charitable event at that location;

(7) A certificate of health inspection, or letter of exemption, from the Dare County Health Department with respect to any food products prepared by any food operation required to be licensed. Sanitary facilities must be provided as required by the Dare County Health Department or the North Carolina Building Code;

(8) In summary format, the general plans of the applicant and sponsor concerning the following matters (as applicable to the event):

(a) Crowd control procedures;

(b) Traffic and parking control;

(c) The impact of the performance or event on existing parking areas, streets, highways and the burden placed upon public agencies for traffic and crowd security and control;

(d) The effects of such performance or event on fire control and fire prevention, including safety precautions;

(e) Provisions for emergency medical services and first aid;

(f) Provisions for collection and disposal of solid wastes, including trash and garbage, and sanitary provisions, including human waste collection and disposal and the providing of sanitary facilities;

(g) Provisions for returning the site to its pre-event conditions, including but not limited to the removal of all debris and trash immediately after the event;

(h) The amount, type, and location of temporary signage.

(9) Such other information as the Zoning Administrator or designee may determine necessary.

(Ord. 03-14, passed 7-14-03; Am. Ord. 05-03, passed 3-17-05; Am. Ord. 12-03, passed 3-12-12; Am. Ord. 13-13, passed 9-9-13; Am. Ord. 17-5, passed 7-10-19)

§ 111.09 APPLICATION REVIEW.

The Zoning Administrator or designee shall, upon receipt of an application for a permit, review it with the applicant or sponsoring organization to determine any other matters deemed relevant and for the obtaining of more specific information concerning the items presented in the permit application. In determining whether or not to issue such permit, the Zoning Administrator or his or her designee shall consider those items

required to be presented in the permit application and shall also consider conflicts and possible conflicts with other events and performances, the burden placed by the event on public agencies, the adequacy of security, traffic control and crowd control provisions, the health and safety conditions for those attending the performance or event and the capacity of the area designated for the event to contain the expected number of vehicles, participants, and spectators. In addition, the Zoning Administrator or designee must find that the provisions and plans for crowd and traffic control and security, health and sanitation and all matters required to be included in the permit application are adequate and that the applicant and sponsor have the reasonable capability of carrying out such plans and preparations.

(Ord. 03-14, passed 7-14-03; Am. Ord. 05-03, passed 3-17-05; Am. Ord. 12-03, passed 3-12-12; Am. Ord. 17-5, passed 7-10-19)

§ 111.10 PERMIT ISSUANCE AND REVOCATION.

(A) The Zoning Administrator or designee, after review of the requirements contained in this chapter and the permit application, shall either grant or deny a charitable special event within five working days after a permit application has been submitted.

(B) Such permit shall be issued when the Zoning Administrator or designee finds that:

(1) The proposed activity will not unreasonably interfere with the rights of the general public in having free access along public ways and streets, after consultation with the Chief of Police or designee and such other public officials as may be deemed appropriate;

(2) The proposed activity will not unreasonably interfere with or detract from the promotion of public health, welfare, safety and recreation;

(3) Adequate public services are available for crowd and traffic security and control;

(4) The proposed activity is not reasonably anticipated to incite violence, crime or disorderly conduct; that the proposed activity will not entail extraordinary or burdensome expense or operations on the Police Department and other public agencies;

(5) The activities will not interfere with other scheduled events.

(C) The granting of a permit shall be by letter to the applicant setting out all conditions of the permit and incorporating any provisions or conditions in addition to statements and presentations in the permit application.

(D) Any deviation from the terms and conditions of the permit, or the approved statements contained in the application, or any misstatements of fact made in such application shall be grounds for immediate revocation of the permit at any time by the Zoning Administrator or designee or the Police Chief or designee.

(Ord. 03-14, passed 7-14-03; Am. Ord. 05-03, passed 3-17-05; Am. Ord. 12-03, passed 3-12-12; Am. Ord. 17-5, passed 7-10-19)

§ 111.11 PERMIT NOT GROUNDS FOR OTHER VIOLATIONS.

The granting of an application is not grounds for the violation of any other ordinance of the town, county or state, and the applicant shall comply with all ordinances of the town. Failure to make provisions for complying shall be grounds for revocation under this chapter.

(Ord. 03-14, passed 7-14-03; Am. Ord. 05-03, passed 3-17-05; Am. Ord. 12-03, passed 3-12-12; Am. Ord. 17-5, passed 7-10-19)

§ 111.12 PERMIT APPEAL.

In the event the Zoning Administrator or designee denies the permit, or subsequently revokes the permit, the applicant shall have seven days in which to appeal such denial or revocation to the Board of Commissioners. Such appeal shall be in writing, stating the grounds therefore and shall be addressed to the Mayor with a copy to the Town Manager. The Board of Commissioners shall hear the appeal at the next public meeting. The decision of the Board of Commissioners shall be final.

(Ord. 03-14, passed 7-14-03; Am. Ord. 05-03, passed 3-17-05; Am. Ord. 12-03, passed 3-12-12; Am. Ord. 13-13, passed 9-9-13; Am. Ord. 17-5, passed 7-10-19)

§ 111.13 DISCLAIMER OF LIABILITY.

(A) In no event shall the issuance of a permit under this chapter make or cause the town to be deemed a sponsor of the event. Further, the town shall incur no liability for any injury to person or property arising out of any events regulated by this chapter. Further, as a condition of any permit issued pursuant to this chapter, the permittee and sponsor(s) shall protect, defend and hold the town and its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of the event, agreement and/or the performance hereof that are due to the negligence of the sponsor, its officers, employees, or agents, and not the result of the town's sole negligence. The sponsor further agrees to investigate, handle, respond to, provide defense for and defend the same at its sole expense and agrees to bear all other costs and expenses related thereto. The indemnity called for herein shall be in writing and signed by the sponsor of the event.

(B) The applicant shall provide proof of comprehensive liability insurance in the amount of $1,000,000 individual and aggregate limits covering the event and naming the town as an additional insured as well as proof of workers' compensation coverage as required by the state.

(Ord. 03-14, passed 7-14-03; Am. Ord. 05-03, passed 3-17-05; Am. Ord. 12-03, passed 3-12-12; Am. Ord. 13-13, passed 9-9-13; Am. Ord. 17-5, passed 7-10-19)

§ 111.14 PAYMENT OF ACTUAL COSTS REQUIRED.

If the permittee fails to follow the conditions of the approved permit resulting in expense to the town, or requests the use of town services over and above those provided during a regular workday or shift including but not limited to off-duty police officers for security, off-duty lifeguards, or failure to collect and dispose of litter and trash, the actual costs of these services will be calculated and billed to the permittee by the town and the permittee shall be responsible for payment within 30 days. Failure to pay for these services shall be a violation of the Town Code, and the permittee shall be subject to the penalties contained in § 10.99 General Penalty.

(Ord. 13-13, passed 9-9-13; Am. Ord. 17-5, passed 7-10-19)