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

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**PLANNING DEPARTMENT**

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June 13, 2022

Memorandum

To: Debbie Diaz, Town Manager

From: Cameron Ray, Assistant Planning Director *CR*

Subject: Proposed Zoning Amendment – §153.177 Low Density Residential Zone Special Use(s)  
– Add Cluster Home(s)

As you recall, during the May 16, 2022 Board of Commissioners meeting, staff was given direction to prepare a zoning amendment to add Cluster Home(s) as a special use in the Low Density Residential (RL) Zone for essential long-term housing for Planning Board review. The Planning Board reviewed the amendment at its May 25, 2022 meeting.

Attached you will find an amendment to 153.002 Definitions, 153.177(C) Residential Low-Special Uses and 153.311 Cluster Homes. The amendment proposes to add Cluster Home(s) as a special use in the RL zone with several conditions. The proposed amendment defines Long-term occupancy and Short-term vacation occupancy. Long-term occupancy is defined as a residency use for 31 consecutive days or more and Short-term vacation occupancy is defined as a residency for guests for 30 consecutive days or less. The amendment will require cluster home(s) located in the Residential Low Zone to only be used for Long-term Occupancy as defined. The amendment provides size regulations for cluster home(s) located in the Residential Low Zone including a minimum size of 500 square feet and maximum size of 1,500 square feet detached independent dwelling unit with a 12 units per acre density requirement. Additionally, the amendment requires a use agreement to be executed and recorded at the Dare County Register of Deeds ensure long term occupancy. The intent of the attached zoning amendment is to try to mitigate the long-term housing needs by promoting private developers to construct cluster home(s) for essential long-term housing.

The Planning Board reviewed this proposed zoning amendment and forwarded it to the Board with a favorable recommendation. Staff recommends setting the public hearing for July 11, 2022.

## § 153.002 DEFINITIONS.

**Long-term occupancy** - A residential dwelling that is occupied and used for residency and housekeeping purposes for a period of 31 days or more and has a use agreement recorded with the register of deeds that requires 31 or more consecutive days' minimum occupancy by single tenant(s) in perpetuity.

**Short-term vacation occupancy** - A residential dwelling that is used and/or advertised through online media or any other means of advertising for occupancy by guest(s) for a period of 30 consecutive days or less.

## § 153.117 SPECIAL USES.

(C) Cluster homes (see § 153.311 for additional regulations).

- (1) Occupancy of dwellings. Any dwelling constructed as part of Section 153.117(C) shall be occupied on a long-term basis as defined in the 153.002.
- (2) Property owners shall be required to execute and record a long-term use agreement prior to issuance of a building permit declaring that the dwelling unit shall be used only for long term occupancy. This agreement shall be recorded with the Register of Deeds and shall transfer with the property in perpetuity.

## § 153.120 SITE REQUIREMENTS.

(C) *Density.* ~~Multi-family: Six units per acre.~~ Cluster Homes: Twelve units per acre

## § 153.311 CLUSTER HOMES.

*Cluster homes.* In addition to the below specific standards, shall also abide by the regulations associated with the zoning district where the development is located.

(A) *Lot dimensions.* All parcels shall have a minimum width of 75 feet in the Ocean Impact Residential and Commercial Zone. All parcels shall have a minimum width of 100 feet in the Low Density Residential Zone.

(B) *Lot area.* The minimum building site shall be 20,000 square feet in the Ocean Impact Residential and Commercial Zone. The minimum building site shall be a minimum of 1 acre in the Low Density Residential Zone.

(C) *Size and arrangement.* In the Ocean Impact Residential and Commercial Zone, each detached single-family dwelling unit shall be designed and arranged for occupancy by one family operating as a housekeeping unit and shall contain at least 500 square feet, but no more than 2,500 square feet of gross floor area. One structure may be up to

5,000 square feet if it is combined with on-site management or another complementary accessory or principal use. Each detached single-family dwelling unit shall be an independent dwelling unit. In the Low Density Residential Zone, each detached single-family dwelling unit shall be designed and arranged for long-term occupancy and shall contain at least 500 square feet but no more than 1,500 square feet of gross floor area. Each detached single-family dwelling unit shall be an independent dwelling unit

(D) *Building separation.* Within a cluster home development, detached single-family dwelling units shall be separated from one another by a minimum of ten feet.

(E) *Driveway access.* Each detached single-family dwelling unit shall have access to a shared driveway. The shared driveway must be designed to a minimum width of 20 feet to allow fire-fighting apparatus to locate within 150 feet of all sides of all structures on the property. The shared driveway may be reduced to a minimum width of 12 feet where it is closer than 150 feet to all sides of all structures on the property. A shared driveway of less than 20 feet may be reviewed and approved by the Fire Marshal in conjunction with an approved alternative life safety plan or an approved fire suppression system. The shared driveway material shall support the weight of fire apparatus as determined by the Fire Marshal.

## 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—§153.177 Low Density Residential Zone Special Use(s) – Add Cluster Home(s)

**Approval/Denial:** Planning Board finds that the Proposed Zoning Amendment §153.177 Low Density Residential Zone Special Use(s) – Add Cluster Home(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 Twenty-fourth day of May, 2022.

Attest:

  
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Planning Board Chairman

  
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Secretary of Planning Board