



# TOWN OF KILL DEVIL HILLS

*Land Where Flight Began*

## NOTICE OF PUBLIC MEETING

NOTICE IS HEREBY GIVEN that on Tuesday, June 20, 2023, at 5:30 p.m., the Kill Devil Hills Planning Board will hold its regular meeting of the month in the Town Hall Meeting Room, located at 102 Town Hall Drive, Kill Devil Hills.

A printed packet is available for public inspection in the Planning Department, 102 Town Hall Drive. To schedule an inspection time, contact the Department at 252-449-5318. Packet materials can be viewed on the Town's website at <https://www.kdhnc.com/743/Meetings-Agendas-Packets-Minutes>.

Written public comments for the Planning Board can be emailed to [info@kdhnc.com](mailto:info@kdhnc.com). Comments must include your name and address and are limited to three minutes for individuals, and five minutes when speaking for a group.

## AGENDA

**Call to Order**

**Agenda Approval**

**Approval of the Minutes of the May 16, 2023, meeting**

**Public Comment**

**Response to Public Comment**

**Ongoing Business**

**New Business**

1. Proposed Zoning Amendment – §153.079 Dune Protection: Modify Regulations for Development within Dune Systems

**Public Comment**

**Response to Public Comment**

**Board Member Comment**

**Adjournment**

Posted this 15<sup>th</sup> day of June 2023.

Jennifer Stecher

Administrative Assistant/Deputy Town Clerk

Copies to: Mayor and Board of Commissioners, Planning Board members in their packet materials; Town Manager; Town bulletin boards; Sunshine List, including all news media; Electronic Distribution List; Town website and social media; file

**Minutes of the Tuesday, May 16, 2023, meeting of the Kill Devil Hills Planning Board held at 5:30 p.m. in the Town Hall Meeting Room, 102 Town Hall Drive, Kill Devil Hills, North Carolina.**

**Members Present:** Chairperson Howard Buchanan, Becky Breiholz, T. Dillon Heikens, Natalie Painter, Mary Simpson, and Ron Seidman, II

**Members Absent:** Michael Lowack & Natalie Painter

**Others Present:** Cameron Ray, Assistant Planning Director; Ryan Lang, Senior Planner; and James Michael O'Dell, Town Clerk

**Call to Order**

At 5:30 p.m., Chairperson Howard Buchanan called this Tuesday, May 16, 2023, meeting of the Kill Devil Hills Planning Board to order and welcomed everyone present.

**Agenda Approval**

Mary Simpson moved to approve the agenda for this meeting, as presented. Ron Seidman seconded the motion, which was approved by a unanimous, 5-0, vote.

**Approval of the Minutes of the March 21, 2023 meeting**

Becky Breiholz moved to approve the minutes of the March 21, 2023, meeting, as presented. Mr. Seidman seconded the motion, which was approved by a unanimous, 5-0, vote.

**Public Comment**

**Response to Public Comment**

**Ongoing Business**

**New Business**

- 1. Site Plan Review — 207 W. Martin Street — Proposed Cluster Home Development in the Low Density Residential Zone — Including 10 “3-bedroom” and 11 “2-Bedroom” Long-Term Residential Units**

Senior Planner Ryan Lang stated that House Engineering has submitted a proposed site

plan for construction of a 10 “3-bedroom” and 11 “2-bedroom” single-family dwelling Cluster Home Development, drive aisle, and associated site modifications at 207 West Martin Street. The proposed cluster home development is a Special Use in the Residential Low Zone. Mr. Lang noted that the Board of Commissioners approved an amendment for Cluster Homes as a Special Use in the Residential Low Zone for Long Term Occupancy in July 2022. He highlighted Zoning Chapter §153.117, Special Uses Accessory Dwelling Units, and noted that the application, proposed site plan, proposed building elevations, floor plans, and applicant’s response to Staff’s Tech 2 comments were included in the meeting materials. He stated that the applicant has addressed most of Staff’s initial technical review comments; however, some conditions still need to be addressed. Staff recommended that the Planning Board forward the plan to the Board of Commissioners with a favorable recommendation after the detailed conditions have been addressed.

Ms. Simpson inquired about the expected price range of the completed units. Mr. Goodrich, the applicant, said the units will be less expensive than others on the market. Chair Buchanan inquired about how mailing addresses would be provided for the structures. Assistant Planning Director Cameron Ray replied that the Fire Marshal will develop unit identification for first responders and general identification. Ms. Breiholz inquired whether adjoining property owners would be notified. Mr. Ray replied that as a special use, hearing notice will be published and adjoining property owners will be notified by mail.

Mr. Seidman moved to forward the proposed site plan at 207 W. Martin Street — Proposed Cluster Home Development in the Low Density Residential Zone, including 10 “3-bedroom” and 11 “2-Bedroom” Long-Term Residential Units, to the Board of Commissioners, including conditions, with a favorable approval. Dillon Heikens seconded the motion, which was approved by a unanimous, 5-0, vote.

## **2. Zoning Amendment Request – §153.180(C) Commercial Zone Density – Change Density Measurement to Floor Area Ratio (FAR)**

Mr. Ray stated that Eddie Goodrich had submitted an application to amend Zoning Chapter §153.180(C), density requirements in the Commercial Zoning District for multi-family dwellings, Cottage Courts, and Cluster Homes, to change the unit of measurement from units per acre to floor area ratio (FAR). The amendment was highlighted in Mr. Ray’s memorandum, which was included with the meeting materials. As requested, the maximum FAR would be up to .50, with two exceptions:

- If side yard setbacks are increased by two feet on each side: up to .55
- If the side yard buffer is increased by two feet on each side: up to .60.

Staff recommended forwarding the amendment to 153.180(C) Commercial Zone Density Requirements, to change the density measurement to Floor Area Ratio (FAR), as presented, with a consistency statement, to the Board of Commissioners, with a favorable recommendation.

Mr. Ray noted that the FAR measurement will create more density consistency, since FAR is utilized in multi-family and hotel / motel. Ms. Simpson inquired if FAR is increased,

what is the anticipated increase in square footage. Mr. Ray replied that it depends upon the size of the parcel.

Mr. Heikens moved to approve and forward the proposed Zoning Amendment – §153.180(C) Commercial Zone Density – Change Density Measurement to Floor Area Ratio (FAR) with consistency statement, to the Board of Commissioners with a favorable recommendation. Ms. Breiholz seconded the motion, which was approved by a unanimous, 5-0, vote.

### **3. Election of Vice-Chairperson**

Town Clerk Michael O'Dell conducted the election for the Planning Board Vice-Chairperson. Chair Buchanan nominated Ron Seidman for Vice Chairperson of the Planning Board. Ms. Breiholz seconded the nomination. With no further nominations offered, nominations were closed. Ron Seidman was elected Vice Chairperson by a unanimous, 5-0, vote.

### **Public Comment**

### **Response to Public Comment**

### **Board Member Comment**

### **Adjournment**

There being no further business before the Planning Board at this time, Ms. Simpson moved to adjourn the meeting. Ms. Breiholz seconded the motion, which was approved by a unanimous, 5-0, vote.

It was 5:44 p.m.

Submitted by:

James Michael O'Dell  
Town Clerk

Director of  
Planning and Inspections  
MEREDITH GUNS

Building Inspector  
MARTY SHAW  
CHARLES THUMAN

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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June 20, 2023

Memorandum

To: Planning Board

From: Cameron Ray, Assistant Planning Director 

Subject: Proposed Zoning Amendment – §153.079 Dune Protection: Modify Regulations for Development within Dune Systems

Staff was given direction from the Board of Commissioners to prepare and bring options to discuss dune regulations that could increase the protection and preservation of dunes throughout Kill Devil Hills. Currently, Town Code section 153.079 “Dune Protection” includes regulations for permitting development in areas with dunes, while encouraging the preservation of dunes. This ordinance not only regulates the dunes that border our oceanfront, but also dunes that are inland. Town code defines ocean dunes and inland dunes, as they both are considered vital protective barriers to barrier islands against natural hazards such as wind, flood, and erosion.

The existing CAMA regulations allow for development in the ocean dune system that has created concern with several of the recent development projects leading the Board to direct staff to investigate. Staff has consulted with the CAMA regional office in Elizabeth City to ensure that the Town has the ability to adopt higher regulatory standards for dune protection than the existing CAMA regulations. During the May 24, 2023 Board of Commissioners meeting, Staff proposed several options for ways that the Town’s Dune Protection ordinance (153.079) could be amended for greater protection and preservation of the dune system. In response to the discussion staff was asked to bring an ordinance amendment to the Planning Board for review and recommendation.

Attached is a proposed zoning amendment to §153.079 Dune Protection to modify regulations for development within dune systems. Staff recommends the Planning Board forward the amendment and consistency statement to the Board of Commissioners with a favorable recommendation.

## **§ 153.002 DEFINITIONS.**

DUNES, OCEAN. Mound(s) of sand located landward of the ocean beaches that have stable and natural vegetation present, have an elevation equal to the mean flood level for the area plus six feet, and extends landward through a dune system of a frontal, primary, and secondary dunes to a landward toe, which is the location of the landward maximum slope change and lowest elevation behind the dune system.

DUNE(S), INLAND. Mound(s) of sand other than ocean dunes having an elevation of 15 feet or more above mean sea level.

## **§ 153.079 DUNE PROTECTION.**

- (A) Purpose. The dunes along the oceanfront and in inland areas of the town are a feature unique to coastal areas. Dunes serve as important protective barriers against the dangers of wind, flood and erosion. Some dunes are also important tourist attractions and all make a vital contribution to the character and appearance of the area. The practice of destroying or altering the existing contours of dunes and removing vegetation can constitute a serious threat to adjacent properties that depend on the dunes as protection against wind, flood and erosion. Accordingly, the town declares that the dunes should be preserved and development on the dunes controlled in a manner compatible with the preservation of the dunes.
- (B) Intent. This section is adopted to permit development that is compatible with the environmentally-sensitive nature of sand dunes and to preserve the dunes in their existing state where such dunes are considered a vital protective barrier against wind, flood and erosion or where such dunes are considered an important existing topographic feature of the town. More specifically this chapter is adopted to:
- 1) Preserve and protect the heritage of the town by maintaining the existence of natural and constructed dunes both along the oceanfront and in inland sections of the town;
  - 2) Protect the health, safety and welfare of persons living, visiting or sojourning to and in the town and for the protection of public and private property;
  - 3) Protect the interest of persons whose property would be detrimentally affected by the destruction or removal of oceanfront or inland dunes;
  - 4) Permit development and encourage the preservation of natural conditions;
  - 5) Prohibit commercial and industrial excavation/mining on sand dunes.
- (C) Applicability. These standards apply additional Town regulations to those Ocean and Inland Dune(s) that are also regulated by the NC Coastal Area Management Act and subject to those State regulations.
- (D) Regulatory Standards
- 1) It shall be unlawful for any development activities without a valid building permit, health department approval, or CAMA authorization.
  - 2) Development at any site in areas of the town that contain oceanfront or inland dunes require the submission of a site plan including topographic information with proposed improvements for review and approval by a town zoning official.
  - 3) A horizontal/vertical slope not to exceed 4 feet to 1 foot shall be maintained unless the dune-disturbing activity is intended to provide elevations that are consistent with abutting properties. Graded slopes must be vegetated or otherwise stabilized within 30 working days of completion of the work;

- 4) Unauthorized dune-disturbance shall be considered a violation and shall be subject to penalties (10.99), Mitigation plans prepared by a North Carolina Design Professional shall be required for any unauthorized dune disturbance.
- 5) It shall be a violation of this chapter to fail to repair or restore dunes or vegetation damaged by development activity not specifically allowed by exceptions in this section.
- 6) Maintenance and Repair is allowed for sand to be redistributed into the dune system from accumulation of storm over wash or wind driven sedimentation by removing sand up to 6 feet around buildings, driveways, and associated structures.
- 7) Prohibition of damage to ocean and inland dunes.
  - a) Ocean Dune(s);
    1. It shall be unlawful for any person, firm or corporation in any manner to damage, destroy, remove or change the existing contour of any sand dune or part of any dune thereof or to kill, destroy or remove any trees, shrubs or other vegetation growing on the dunes, except in:
      - a) Elevated structures; All elevated structures shall be elevated a minimum of 18 inches and maximum of 30 inches from the underside.
      - b) Approved matted walkways for accessibility.
  - b) Inland Dune(s);
    1. It shall be unlawful for any person, firm or corporation in any manner to damage, destroy, remove or change the existing contour of any sand dune or part of any dune thereof or to kill, destroy or remove any trees, shrubs or other vegetation growing on the dunes, except in:
      - a) The area within the foundation perimeter of any existing building or any building to be constructed as shown on a site plan reviewed and approved by a town zoning official;
      - b) The area around the perimeter of an existing building or proposed principal building not to exceed a width of ten feet from the building foundation perimeter in accordance with a site plan approved by a town zoning official;
      - c) The area within the boundaries of existing driveways and parking areas or within the boundaries of driveways and parking areas to be constructed in accordance with a site plan approved by the Planning Board or town zoning official;
      - d) Landscaped areas and garden plots, provided the dune contour is not altered;
      - e) The area required for the construction and installation of water, sewage or wastewater disposal systems, drainfields and stormwater control systems, provided that every reasonable effort is made not to alter the contour of the dune and the site is stabilized with plantings of vegetation approved by a town zoning official.

## **§ 153.079 DUNE PROTECTION.**

~~—(A) *Purpose.* The dunes along the oceanfront and in inland areas of the town are a feature unique to coastal areas. Dunes serve as important protective barriers against the dangers of wind, flood and erosion. Some dunes are also important tourist attractions and all make a vital contribution to the character and appearance of the area. The practice of destroying or altering the existing contours of dunes and removing vegetation therefrom can constitute a serious threat to adjacent properties that depend on the dunes as protection against wind, flood and erosion. Accordingly, the town declares that the dunes should be preserved and development on the dunes controlled in a manner compatible with the preservation of the dunes.~~

~~—(B) *Intent.* This section is adopted to permit development that is compatible with the environmentally sensitive nature of sand dunes and to preserve the dunes in their existing state where such dunes are considered a vital protective barrier against wind, flood and erosion or where such dunes are considered an important existing topographic feature of the town. More specifically this chapter is adopted to:~~

~~—(1) Preserve and protect the heritage of the town by maintaining the existence of natural and constructed dunes both along the oceanfront and in inland sections of the town;~~

~~—(2) Protect the health, safety and welfare of persons living, visiting or sojourning to and in the town and for the protection of public and private property;~~

~~—(3) Protect the interest of persons whose property would be detrimentally affected by the destruction or removal of oceanfront or inland dunes;~~

~~—(4) Permit development and encourage the preservation of natural conditions;~~

~~—(5) Prohibit commercial and industrial excavation/mining on sand dunes.~~

~~—(C) *Prohibition of damage to sand dunes.*~~

~~—(1) It shall be unlawful for any person, firm or corporation in any manner to damage, destroy, remove or change the existing contour of any sand dune or part of any dune thereof or to kill, destroy or remove any trees, shrubs or other vegetation growing on the dunes, except in:~~

~~—(a) The area within the foundation perimeter of any existing building or any building to be constructed as shown on a site plan reviewed and approved by the Planning Board or town zoning official;~~

~~—(b) The area around the perimeter of an existing building or proposed principal building not to exceed a width of ten feet from the building foundation perimeter in accordance with a site plan approved by the Planning Board or town zoning official;~~

~~—(c) The area within the boundaries of existing driveways and parking areas or within the boundaries of driveways and parking areas to be constructed in accordance with a site plan approved by the Planning Board or town zoning official;~~

~~—(d) Landscaped areas and garden plots, provided the dune contour extant is not altered;~~

~~—(e) The area required for the construction and installation of water, sewage or wastewater disposal systems, drainfields and stormwater control systems, provided that every reasonable effort is made not to alter the contour of the dune and the site is stabilized with plantings of vegetation approved by the Planning Board or town zoning official.~~

~~—(2) Development at any site in areas of the town that contain oceanfront or inland dunes may require the submission of a development plan and/or site plan with proposed improvements for review and approval by the Planning Board or town zoning official;~~

~~—(3) Any activity that requires the removal or relocation of greater than ten cubic yards of sand per year shall require prior approval by the town zoning official. All sand removed from an area pursuant to this section shall be redeposited at locations within the same sand dune system from which it is removed. Exceptions to this rule shall be allowed only if the Planning Board or town zoning official determine that adequate space is not available within the same sand dune system from which the sand was removed;~~

~~—(4) No dune disturbing activity shall be permitted that results in a vertical cut in excess of five feet. Any dune disturbing activity that results in a cut in excess of three feet shall be backfilled to achieve a horizontal-vertical slope of at least four to one;~~

~~—(5) It shall be a violation of this chapter to fail to repair or restore dunes or vegetation damaged by development activity not specifically allowed by exceptions in this section.~~

~~—(6) The town promotes and realizes the need for Assisted Living Facilities; therefore, for Assisted Living Facilities in the Government and Institutional Zone—Private Ownership, up to 10,000 square feet of dune can be disturbed or relocated per five acre lot. Dune removal shall be limited to the building footprint, street, parking areas and infrastructure location and shall be relocated as defined in division (C)(3) of this section. Division (C)(4) of this section shall not apply to dune disturbance authorized in this section. The Planning Board and Board of Commissioners shall approve the dune disturbance plan prior to issuance of a building permit and commencement of work.~~

## 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 – §153.079 Dune Protection: Modify Regulations for Development within Dune Systems

**Approval/Denial:** Planning Board finds that the Proposed Zoning Amendment – §153.079 Dune Protection: Modify Regulations for Development within Dune Systems 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 \_\_\_\_ to \_\_\_\_, this the twentieth day of June, 2023.

Attest:

\_\_\_\_\_  
Planning Board Chairman

\_\_\_\_\_  
Secretary of Planning Board