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THE TOWN OF KILL DEVIL HILLS
NORTH CAROLINA

PLANNING DEPARTMENT

July 10, 2023

Memorandum

To: Debbie Diaz, Town Manager

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.

On June 20, 2023 the Planning Board reviewed the attached proposed zoning amendment to §153.079 Dune Protection to modify regulations for development within dune systems and recommended approval. Staff recommends setting the required public hearing for August 14, 2023.

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 deleting §153.079 Dune Protection, adding the underlined language and deleting the following ~~stricken~~ language to the sections identified below, as follows:

§ 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.

DUNES, OCEAN.

(1) ~~**PRIMARY.** First mounds of sand located landward of the ocean beaches having an elevation equal to the mean flood level for the area plus six feet.~~

(2) ~~**FRONTAL.** In areas where there is a primary dune, that dune shall be deemed to be the frontal dune. Where there is no primary dune, the frontal dune is deemed to be the first mound of sand located landward of the ocean beach having sufficient vegetation, height, continuity and configuration to offer protective value. Man-made mounds seaward of the natural line of frontal~~

~~dunes and dunes created after June 1, 1979 shall not be considered to be frontal or primary dunes, except where no frontal or primary dune exists.~~

~~**DUNE(S), INLAND.** Mound(s) of sand other than primary or frontal 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, and 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) Mitigation plans prepared by a North Carolina Design Professional shall be required for any unauthorized dune disturbance. Unauthorized dune-disturbance shall be considered a violation and shall be subject to penalties;

(a) In accordance with G.S. § 160A-175, and unless this code of ordinances provides otherwise, violation of any provision hereof shall be a Class 3 misdemeanor as provided in G.S. § 14-4, punishable upon conviction by a fine not exceeding \$50 or by imprisonment not exceeding 30 days. An ordinance may provide by express statement that the maximum fine or term of imprisonment to be imposed for its violation shall be some figure or number of days less than the maximum penalties prescribed by G.S. § 14-4.

(b) Penalties.

(1) As authorized by G.S. § 160A-175, the violation of any of the provisions of this code shall subject the person or entity violating such provisions to a civil penalty of \$50 per day for each of the first 15 days such violation continues after notice of the violation from the town, \$100 per day for the sixteenth through the thirtieth day such violation continues after the initial notice from the town, and \$500 or the maximum amount authorized under the provisions of the North Carolina General Statutes, whichever is greater, for each day after 30 days that such violation continues after the initial notice from the town.

(2) The imposition and collection of the foregoing civil penalties shall be in addition to all other remedies available to the town at law or in equity, authorized under the provisions of the North Carolina General Statutes, including but not limited to the suspensions of licenses and permits and actions to abate, enjoin or otherwise remedy violations of this code and all

such remedies shall be cumulative. The imposition of civil penalties or the use of any other civil remedy available to the town shall be in addition to and not exclusive of any criminal proceeding and/or penalties available and/or imposed for the violation of this code.

(c) An ordinance may provide, when appropriate, that each day's continuing violation shall be a separate and distinct offense.

(d) Notice of violation procedure.

(1) For any and all violations of this Code of Ordinances, the authorized staff shall give written notice to the landowner of the subject property and tenant, if applicable. The written notice shall be delivered by personal delivery, electronic mail or by first-class mail. The notice shall be to provide to the last address listed for the owner on the Dare County tax records and/or to the physical property address. For the purposes of this notice, delivery by first-class mail shall be deemed received on the third business day following deposit of the notice in the mail with the United States Postal Service and delivery by electronic mail shall be deemed received on the date sent.

(2) Posted notice. Notice of violations may also be posted on the property at the discretion of the authorized staff.

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.

This amendment to Chapter 153, Zoning, shall be in full force and effect from and after the ____ day of _____, 2023. Adopted and approved by the Board of Commissioners of the Town of Kill Devil Hills at a regular meeting held on the ____ day of _____, 2023, 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 _____, 2023 at ____ .m.

James Michael O'Dell
Town Clerk



TOWN OF KILL DEVIL HILLS

Land Where Flight Began

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

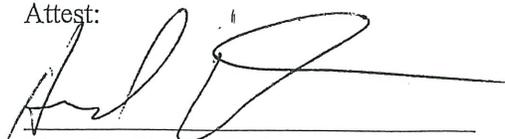
Proposed Amendment Title: Proposed Zoning Amendment – §153.079 Dune Protection: Modify Regulations for Development within Dune Systems

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 6 to 0, this the twentieth day of June, 2023.

Attest:



Planning Board Chairman



Secretary of Planning Board