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Building Inspector
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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

PLANNING DEPARTMENT

September 19, 2023

Memorandum

To: Planning Board

From: Cameron Ray, Assistant Planning Director 

Subject: Zoning Amendment Request - 153.180(D) Commercial Zone Site Requirements:
Exceptions – Previously Platted Use(s) as an Exception to Minimum Lot Size
Requirement

Attached is an application for a Zoning Amendment Request submitted by Quible & Associates on behalf of Wright Shores Association Inc. The request is to amend 153.180(D) Exceptions to Commercial Zone Site Requirements to allow uses listed on original subdivision plats be exempted from the Commercial Zone site requirement for a minimum lot area of 15,000 square feet.

Background; Town Zoning regulations include site requirements in each zoning district to include standards for Lot dimensions, Lot area, Density, Lot coverage, Stormwater runoff, and Land disturbance. In all zoning districts the minimum Lot area requirement for development is 15,000 square feet. However, all districts have an exception to this requirement to allow single-family development on lots less than 15,000 square feet if platted on or before June 14, 1983. For example, the majority of Avalon Beach Subdivision was recorded with lots 5,000 square feet and because they were recorded before the date mentioned above, each lot can be developed with one single-family dwelling. There is no exception to minimum 15,000 square foot lot size requirement for commercial developments.

Several concerns about the request as presented include; allows for commercial uses on lots smaller than 15,000 square feet, allows greater vesting than what is already adopted, does not consider Town wide effects for unknown platted uses in the entire commercial zone, sets a precedent for other zoning districts, and limits the Town's ability to regulate land uses.

Currently, the lot area requirement for all uses other than single family dwellings is 15,000 square feet. Many factors were considered in deciding the lot area minimum of 15,000 square feet with the effects of commercial developments/uses such as bulk, density, noise, light, traffic, stormwater management, and open space. Much of the Town was platted on lots smaller than 15,000 square feet, however these lots are primarily all single-family residential lots, as was the intended use. The current lot size requirement was adopted when commercial development on smaller lots no longer met the vision of the Town. Allowing commercial uses on lots smaller than currently required will create inconsistencies in enforcement of Town regulations.

This amendment requests previously platted uses on a subdivision plat be allowed to have a vesting in perpetuity. This is not aligned with the Town's zoning ordinance, which vests a final subdivision plat two years from the date of approval; if vesting has expired, all new or amended zoning regulations will apply. This is consistent with the statutory requirements under 160D-108, Permit Choice and Vested Rights. These vesting of rights ensure that the property owner can reasonably have time to secure all permitting, while also protecting the Town's ability to regulate land uses as things change.

The application states that this amendment request is justified and promotes the public health, safety, and general welfare by referencing and considering the property that is currently owned by Wright Shores Association Inc. It is important to note that this amendment request is to the entire Commercial Zoning District in the Town and not a site-specific amendment. The application states that the subdivision plat for Wright Shores Section Two, dated 1973, illustrated parking on the parcel along Fourth Street. A majority of the Town subdivisions were platted prior to 1983 (the date the ordinance allows for exception to lot size) and without extensive research, Staff cannot estimate how many parcels this amendment will affect. In reference to Wright Shores Section Two, this was a subdivision approval from 50 years ago and since the time of the plat, the Town has reasonably adopted additional regulations to meet the needs of the community with sound planning including a minimum lot size of 15,000 square feet for commercial developments. Additionally, there is concern that if approved in the Commercial Zone, precedents would be set for all other zoning districts that also have previously platted uses.

There are numerous items that are in the application that focus on two properties in Wright Shores Subdivision, with primary emphasis on just the Fourth Street parcel, but does not consider Town wide affect. The application addresses site specific items that are more appropriate to be considered by the Board of Adjustment in a request for a Variance, where the applicant can offer evidence that there is unique hardship at this property for the use of a parking area.

Through 160D Article 7 of the North Carolina General Statutes, Town's have the ability to adopt Zoning Regulations to promote the public health, safety, and general welfare. Allowing previously platted uses to be exempt from current zoning regulations goes against the intent the NC general statutes and Town regulating authority. This precedent undermines past planning efforts, zoning ordinances, and the Town's ability to regulate.

Staff recommends the Planning Board forward the Zoning Amendment Request to 153.180(D) Commercial Zone Site Requirements: Exceptions – Previously Platted Use(s) as an Exception to Minimum Lot Size Requirement to the Board of Commissioners with the attached consistency statement recommending denial.

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: Zoning Amendment Request - 153.180(D) Commercial Zone Site Requirements: Exceptions – Previously Platted Use(s) as an Exception to Minimum Lot Size Requirement

Approval/Denial: Planning Board finds that the Proposed Zoning Amendment §153.180(D) Commercial Zone Site Requirements: Exceptions – Previously Platted Use(s) as an Exception to Minimum Lot Size Requirement *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 Nineteenth day of September, 2023.

Attest:

Planning Board Chairman

Secretary of Planning Board



Town of Kill Devil Hills
North Carolina

Application for a Code Amendment

(Please Type or Print)

Petitioner

Name:

Wright's Shores Association Inc.

Address: P.O. Box 7552

Kill Devil Hills, NC 27948

Telephone Number:

(910) 787-2794

Email:

davis12nc@yahoo.com

Agent for Petitioner (If Applicable)

Name:

Quible & Associates, P.C.

Address: P.O. Drawer 870

Kitty Hawk, NC 27949

Telephone Number:

(252) 491-8147

Email:

mstrader@quible.com

I hereby request an amendment to the following specific section of the Town Code:

Chapter: 153

Code: 153.180(D)

Title: Commercial Zone Site Requirement

To this application, attach:

- One copy of the code in question (existing Kill Devil Hills Town Code)
- One copy of your proposed code amendment, with the proposed changes highlighted



Kill Devil Hills

North Carolina

CODE AMENDMENT APPLICATION

Planning and Inspections Department

(252) 449 – 5318

102 Town Hall Drive

Kill Devil Hills, NC 27948

FEE: \$500.00

The purpose of this application is to *request* a code amendment, or a permanent alteration, to the Kill Devil Hills Town Code.

Required attachments/submittals for an application for a code amendment:

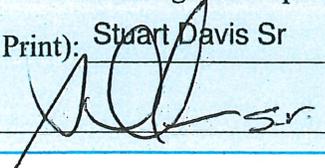
- 1.) A completed application
- 2.) One copy of the code in question (existing Kill Devil Hills Town Code)
- 3.) One copy of your proposed code amendment, with the proposed changes highlighted
- 4.) Application Fee, ~~which is non-refundable~~

*****Important: If any of the above requirements are not present at the time of submittal, the application will be deemed incomplete and will not be accepted.*****

Certification:

I (we) hereby acknowledge and say that the information contained herein and herewith is true and that this application shall not be scheduled for official consideration until all of the required contents are submitted in proper form to the Town of Kill Devil Hills Planning and Inspections Department.

Petitioner's Name (Please Print): Stuart Davis Sr

Petitioner's Signature: 

Date: 7-24-23

Fee Received by: 

Date: 8/9/23



Town of Kill Devil Hills
North Carolina

Application for a Code Amendment

1. Please provide a **detailed** justification for the proposed amendment (*attach additional pages as needed*):

Ordinance Section 153.180 currently precludes a parcel having less than 15,000 square feet from proposing a parking area. The approved subdivision plat for Wright's Shores Section Two dated 1973, recorded in PL: 6, SL: 32, included and illustrated parking areas within parcels of land located off E. 5th Street and E. 4th Street. Improvements were made within the E. 5th Street parcel that included a paved parking area, and improvements were made within the E. 4th Street parcel that included a gravel drive with parallel parking. The Town's Ordinance was adopted and has changed over the years requiring a "building site" to have at least 15,000 square feet to be developed, with an exception being a single-family dwelling for lots of record prior to June 14, 1983. Thus, a SFD could potentially be developed, but not a parking area although parking areas were shown on the 1973 subdivision plat that was reviewed and approved by Town Officials and subsequently recorded within the Register of Deeds Office.

2. How does this proposed amendment help to promote the public health, safety, and general welfare? (*attach additional pages as needed*)

Inadequate parking facilities exist to access the beach within the extents of the Wright's Shores Subdivision. Vehicles tend to over-park, park illegally, or trespass to access the beach. The property owners of the Wright's Shores Subdivision share the same existing beach access parking areas long with other members of the public. By allowing for the property owners of the Wright's Shores Subdivision to utilize the two parkings areas shown within the 1973 recorded subdivision plat, it not only allows more adequate parking for the Association's property owners but also frees up parking within the nearby public parking areas. In general, the additional parking facilities would improve public safety and general welfare.

§ 153.180 SITE REQUIREMENT.

(A) Lot dimensions. All parcels shall have a minimum width of 50 feet.

(B) Lot area.

(1) The minimum building site shall be 15,000 square feet.

(2) The minimum building site for a duplex shall be 15,000 square feet.

(3) Exempt recombination plats for lots platted prior to June 14, 1983 shall have a minimum lot size of 7,500 square feet.

(C) Density.

(1) Multi-family dwelling: 18 units per acre.

(2) Hotel and motel: For any hotel/motel development, the maximum floor area ratio (FAR) shall be up to 0.50; exceptions described in division (D) below.

(D) Exceptions.

(1) Where a lot or parcel of land has an area of less than the above required minimum area and was of record on June 14, 1983, such lot may be occupied by one family, provided the minimum side, front and rear requirements are complied with as set forth in § 153.181;

(2) Per division (C)(2) above, increase minimum required side yard setbacks by two feet on each side, the FAR shall be up to 0.55; and

(3) Per division (C)(2) above, increase minimum required side yard buffer as set forth in § 153.184 by two feet on each side and items in division (C) above the FAR shall be up to 0.60.

(4) Where a lot or parcel of land has an area of less than the above required minimum area and was of record on June 14, 1983, such lot may be improved to employ the use shown on the approved recorded plat, provided the remaining requirements are complied with as set forth in § 153.181;

(E) Lot coverage.

(1) Maximum allowable lot coverage by principal use, all accessory structures, vehicular circulation areas and parking - 65%. (For exceptions, see § 153.082(D).)

(2) Soils classified as wetlands shall be factored into lot coverage calculation based on the following schedule:

(a) If the lot is composed of less than 25% of its total area in wetland soils, then 75% of that area classified as wetlands may be used in calculating lot coverage;

(b) If the lot has between 25% to 50% of its total area in wetland soils, then 50% of that area classified as wetlands may be used in calculating lot coverage;

(c) If the lot has between 50% to 75% of its total area in soils classified as wetlands, then 25% of that area classified as wetlands may be used in calculating lot coverage;

(d) If the lot has 75% or more of its total area classified as wetlands, none of that area classified as wetlands may be used in calculating lot coverage.

(3) Permeable pavement lot coverage calculations:

(a) For lots greater than five acres, the use of permeable paving systems, including porous concrete, porous asphalt, concrete grid pavers and permeable interlocking concrete pavers, for parking spaces, drive aisles and vehicular circulations areas, a reduction in the calculated lot coverage shall be allowed. All permeable paving systems shall comply with the criteria of the North Carolina Division of Water Quality Stormwater Best Management Practices Manual (current edition). The following calculated reductions are allowed.

1. Porous concrete without washed stone base - 40% reduction.
2. Porous concrete with at least six inches of washed stone base - 60% reduction.
3. Porous asphalt, concrete grid pavers and permeable interlocking concrete pavers with at least four inches of washed stone base - 40% reduction.
4. Porous asphalt, concrete grid pavers and permeable interlocking concrete pavers with at least seven inches of washed stone base - 60% reduction.

(b) For lots less than five acres, the use of permeable paving systems, including porous concrete, porous asphalt, concrete grid pavers, permeable interlocking concrete pavers, and plastic reinforcing grids for parking spaces, drive aisles and vehicular circulation areas, a reduction in the calculated lot coverage shall be allowed. Plastic reinforcing grids shall be limited to low-intensity applications with low traffic speeds. Examples include, but are not limited to, parking stalls in commercial parking lots, overflow parking areas, utility access, emergency vehicle and fire access lanes, and loading areas. Material to fill the open cells of the pavement system types shall consist of open graded fine aggregate, open graded washed aggregate, sod turf grasses native to the southeast coastal environment and exhibit medium to high permeability rates. All permeable paving systems shall comply with the criteria of the North Carolina Division of Water Quality Stormwater Best Management Practices Manual (current edition). The following calculated reductions are allowed:

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5. The pavement section shall consist of the surface course or layer for infiltration, a bedding course (as required), a woven geotextile fabric layer, and aggregate storage layer, and a woven geotextile fabric layer to prevent clogging.

6. Edge restraints shall be provided on all concrete grid pavers, permeable interlocking concrete pavers, and plastic reinforcing grid installations to confine the pavement installation. The pavement surface course structural properties shall be designed to withstand the applied vehicular loading pursuant to the specified application.

(c) In no case shall the total area that is occupied and obstructed by any structure above the ground, including but not limited to parking and drive areas, exceed 75% of the area of the lot.

(F) Drainage/stormwater runoff. All development is required to follow the provisions of § 153.070.

(G) Land disturbance. See § 153.071.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 04-10, passed 5-26-04; Am. Ord. 05-12, passed 8-8-05; Am. Ord. 10-13, passed 7-12-10; Am. Ord. 11-09, passed 5-25-11; Am. Ord. 15-16, passed 5-16-16 ; Am. Ord. 17-29, passed 3-8-21 ; Am. Ord. 18-4, passed 6-14-21)

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Quible

Quible & Associates, P.C.

ENGINEERING • ENVIRONMENTAL SCIENCES • PLANNING • SURVEYING
SINCE 1959

P.O. Drawer 870
Kitty Hawk, NC 27949
Phone: 252-491-8147
Fax: 252-491-8146
web: quible.com

August 8, 2023

Cameron Ray, CFM, CZO
Town of Kill Devil Hills Planning and Inspections
102 Town Hall Drive
Kill Devil Hills, NC 27948

Re: Wright's Shores Section 2 Parking Areas
Zoning Text Amendment Application
Kill Devil Hills, Dare County, NC

Mr. Ray,

On behalf of Wright's Shores Association Inc, Quible & Associates, P.C., hereby submits for your review and approval the following Zoning Text Amendment Application Package;

- One (1) Application Fee Check in the amount of 500.00 made payable to the Town of Kill Devil Hills;
- One (1) Original of the signed ZTA Application Form;
- Two (2) Copies of the Site Feasibility Sketch;
- One (1) Copy of the Existing Code section § 153.180;
- One (1) Copy of the Proposed Code Amendment.

Please do not hesitate to contact me at 252.491.8147 or mstrader@quible.com if you have any questions, comments, or requests for additional information.

Sincerely,
Quible & Associates, P.C.



Michael W. Strader, Jr., PE

Encl.: As stated

Cc: Wright's Shores Association Inc.



Town of Kill Devil Hills Planning and Inspections
252-449-5318

PAID

AUG - 9 2023

NON-REFUNDABLE FEES

TOWN OF
KILL DEVIL HILLS

Date: 08/09/2023

- Board of Adjustments
- CAMA
- Copies
- Text Amendment
- Other: _____
- Exempt plat/Subdivision
- Fines and/or Re-Inspection Fee
- Site Plan Review
- Permit Re-instatement

Amount: \$500.00

Received From: Wright Shores Association Inc.

Description: Application for a Code Amendment - 153.180(D) Commercial Zone Site Requirements

Received by: Cameron Ray