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THE TOWN OF KILL DEVIL HILLS
NORTH CAROLINA

PLANNING DEPARTMENT

January 15, 2024

Memorandum

To: Debbie Diaz, Town Manager

From: Cameron Ray, Assistant Planning Director 

Subject: Proposed Zoning Amendment – 153.073 Landscaping Requirements – Modify Buffer Requirements for Commercial Use(s)

On November 13, 2023, the Board of Commissioners directed Staff to prepare an amendment for additional regulations for landscaping and buffer requirements for commercial use(s). Currently, Town Code section 153.073 Landscaping Requirements includes regulations for landscaping and buffering that is intended to provide separation of uses, promote aesthetic character, and promote public health and safety through the reduction of noise, air, and visual pollution.

The current Town regulations for buffers between incompatible uses require screening at the property line. Screening shall be either a dense vegetative screen or a six-foot fence with landscaping on the outside. Additionally, the buffer has to have a depth of five feet along property lines and ten feet along property lines abutting streets. Several concerns that previously came up were that the current regulations do not address commercial uses with greater intensity and certain types of fencing used. Primarily, the concern was that these regulations did not address more intense uses or require enough buffer to protect existing adjacent residential properties from the effects of commercial uses.

Staff proposed several options to the Board of Commissioners for ways the Town's landscaping and buffer requirements could be amended to address these concerns. In response to discussion, attached is a proposed amendment to 153.073 Landscaping Requirements. The amendment includes clarification of buffers, increases depth of landscape buffer areas, and provides regulations for existing landscaping.

Buffer clarifications are included for three different buffer types: incompatible use, incompatible zoning districts, and compatible use/streets buffer. The amendment also increases the minimum buffer area for incompatible uses and incompatible zoning from five feet to ten feet to provide more landscaped buffer area between commercial use(s) and residential use(s). The amendment includes regulations for existing landscaping (trees and shrubs) within the buffer area including existing vegetation preservation between incompatible uses, specifically the preservation of live oaks within any buffer areas. Vegetation preservation allows existing vegetation to be used to meet the planting requirements for developments, which provides an incentive for developments to have less new plantings required. Additionally, the amendment removes vinyl fences as an allowed material for fencing used as a landscape buffer.

On December 19, 2023, the Planning Board reviewed the attached proposed zoning amendment to §153.073 Landscaping Requirements and recommended approval. Staff recommends setting the required public hearing for February 05, 2024.

**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 adding the underlined language and deleting the following ~~stricken~~ language to the sections identified below, as follows:

GENERAL REGULATIONS

§ 153.073 LANDSCAPING REQUIREMENTS.

(A) Intent and objectives.

(1) The intent of this section is to improve the appearance of parking areas and properties abutting public rights-of-way; to provide buffering between noncompatible land uses; to provide spatial separation of land uses; to protect, preserve and promote the aesthetic and visual character of lands particularly adjacent to major thoroughfares; and to promote public health and safety through the reduction of noise pollution, air pollution, visual pollution, air temperature and artificial light glare within the town.

(2) Landscaping includes not only trees, shrubbery, grass and ground cover but open paving stones, benches, fountains and exterior lighting fixtures as well. Buildings, vehicles, boats, equipment, parking areas or storage areas shall not be included in required landscaped areas. No more than 20% of a required perimeter landscaped area may be utilized for sidewalks, walkways or private roads. Landscaping standards may be satisfied within required setbacks.

(3) Any existing natural landscape shall be preserved whenever possible. Preservation of trees and further landscaping is the goal rather than destruction of existing trees or plant life. The planting of drought-tolerant vegetation common to the immediate natural coastal environment is encouraged to ensure proper plant life development and maturation.

(4) While the above objectives are general in form, proper design and location of trees, shrubbery and other landscape amenities will be subject to the town's plan review procedure.

(5) Landscaped areas may be used for nitrification fields.

(B) Jurisdiction. The requirements of this section shall apply to all zones.

(C) Applicability. All new development and redevelopment, [substantial improvement, or change of use](#) shall comply with the requirements of this section, except single-family detached residences and duplexes with less than 6,000 square feet of lot coverage, which shall meet the requirements of division (M) below.

(D) Plan review and approval.

(1) A landscape plan shall be submitted at the time application is made for site plan approval covering new development or, redevelopment, [substantial improvement, or change of use](#).

(2) The plan shall include the location and size of all proposed structures or improvements, landscape materials, including botanical and common names, and all existing vegetation by their common names as specified by the following:

(a) A tree survey: show all existing trees which have a diameter of six inches or greater, measured three feet from the base and also all major vegetation with an index of those trees and vegetation;

(b) Total site area;

(c) Parking area;

(d) Landscape area required and provided for in the project;

(e) Number of trees which are provided for the project;

(f) Irrigation plan, if any;

(g) Total amount of interior landscaped area.

(E) Parking lot landscape requirements.

(1) If more than 40 parking spaces are provided, landscaping of 10% of the total parking areas, including aisles, shall be required. This landscaping shall be established within the interior of the parking lot.

(2) The interior landscaped areas shall be located in a manner that:

(a) Assists and helps to control the movement of vehicular and pedestrian traffic;

(b) Provides visual relief from a large expanse of paving;

(c) Preserves existing trees, where possible; and

(d) Screens loading and service areas.

(3) A landscaped aisle shall be provided at the end of each parking row adjacent to the travel lane serving the parking aisle.

(4) In order to encourage the required landscaped areas to be properly dispersed, no required landscape area shall be larger than 350 square feet unless a larger area is necessary to save or protect existing vegetation.

(5) Interior landscaped areas shall contain a minimum of 75 square feet. Within these landscaped areas there shall be a minimum of one small tree per ten parking spaces in addition to other plant materials and ground cover. See division (L) of this section and Appendix A of this chapter.

(6) Required perimeter landscape areas shall not be used in the calculation of required interior landscape areas.

(F) Perimeter landscaped areas.

(1) ~~General. A perimeter landscaped area, with a minimum depth of five feet, shall be required along property lines. Along property lines abutting any street, the minimum depth shall be ten feet. Driveways, sidewalks and similar facilities may traverse perimeter landscaped areas.~~

Type and Width of Required Buffer. A perimeter landscape buffer shall be required along all property lines including property lines abutting any street. The type and width of the landscape buffer will be determined by land use classification and the use or zoning district of the adjacent property.

(2) Screening Buffer requirements.

(a) Buffer between incompatible uses. Commercial, multi-family, single-family greater than 6,000 square feet of lot coverage, and duplex dwellings located adjacent to a single-family residential use less than 6,000 square feet of lot coverage shall provide the following buffer:

1. A minimum depth of ten feet shall be required along property lines abutting an incompatible use.

2. Property lines abutting an incompatible use shall provide a dense vegetative buffer with a mature height of six feet or a fence six feet in height with ornamental landscaping.

i. At the time of installation, a dense vegetative buffer shall contain shrubs at least 30 inches high and planted two-and-one-half feet on center.

ii. When using a fence for buffer requirements the fence shall be constructed of wood, masonry, or engineered sound wall with the ornamental landscaping installed between the fence and the property line and shall provide one tree for each 30 linear feet and one shrub for each 10 linear feet of landscape area. The finished side of the fence shall face the adjacent property.

~~Restaurants, retail sales, shopping centers, automotive sales or repair, taverns, amusement or entertainment establishments, industrial uses, warehouses, wholesale businesses or trucking facilities, business or professional offices, places of worship, schools, daycare centers, parking lots, townhouse or multi-family developments, and~~

~~single family and duplex dwellings with greater than 6,000 square feet of lot coverage must provide screening on their property for certain adjacent uses. Where abutting single family dwellings or duplexes with less than 6,000 square feet of lot coverage to the rear or to the side, such property line shall have a wall constructed of wood, masonry wall, vinyl or composite materials or a vegetative buffer six feet in height along the property line. Along property lines abutting single family or duplex dwellings with less than 6,000 square feet of lot coverage a fence or dense vegetative screen shall be provided. Fences shall be constructed of wood, masonry, vinyl or composite materials and be a minimum of six feet in height. In addition, ornamental landscaping shall be provided if a fence is utilized as a buffer. Dense vegetative screens shall contain shrubs at least 30 inches high at the time of installation planted two and one half feet on center. The type of shrub used needs to be capable of attaining a height of at least six feet at maturity. A dense vegetative screen utilized as a buffer will also satisfy the ornamental landscaping requirements below. In all cases where a fence is constructed, the required landscaped area shall be located between the fence and property line.~~

- (b) Buffer between incompatible zoning districts. Commercial, multi-family, single-family greater than 6,000 square feet of lot coverage, and duplex dwellings uses located in any zoning district adjacent to a Residential Low or Residential High zoning district shall provide the following buffer:

1. A minimum depth of ten feet shall be required along property lines abutting an incompatible zoning district.

2. Property lines adjacent to the incompatible zoning district shall provide a dense vegetative buffer with a mature height of six feet or a fence six feet in height with ornamental landscaping in accordance with (F)(2)(a)(2) above.

Ornamental landscaping. Along property lines not abutting single-family or duplex dwellings with less than 6,000 square feet of lot coverage, the landscape plan shall indicate at least one tree for each 30 linear feet of landscape area and one shrub for each ten feet of landscape area. For new construction or substantial improvements in the Commercial Zone, the landscape plan shall indicate at least one tree and one shrub for each ten linear feet of landscape area along the front property line.

Ornamental landscaping need not be evenly spaced, but rather dispersed throughout the landscape area to create a natural appearance. In all cases where a fence is constructed, the required landscaped area shall be located between the fence and property line.

- (c) Buffer between compatible uses and streets. Commercial, multi-family, single-family greater than 6,000 square feet of lot coverage, and duplex dwellings uses located along any property line adjacent to compatible uses or streets shall provide the following buffer:

1. A minimum depth of five feet shall be required along property lines between compatible uses; along property lines abutting any street, the minimum depth shall be ten feet.

2. Property lines directly adjacent to a compatible use or street shall provide one tree for each 30 linear feet and one shrub for each 10 feet of landscape area.
3. Front property lines shall provide one tree for each 10 linear feet and one shrub for each 10 feet of landscape area.
4. Landscaping shall be dispersed throughout the landscape area to create natural appearance and not be evenly spaced.

(d) Existing Landscaping within required buffer area.

1. Existing natural landscape including shrubs and trees shall be preserved within buffers listed in 153.073(F)(2)(a) & 153.073(F)(2)(b).
2. Existing live oak trees (Town tree) within any landscape buffer listed in 153.073(F)(2) shall be preserved.
3. Existing landscaping preserved within the perimeter landscaped area is allowed to be used to satisfy the planting requirements of 153.073(F)(2), provided the vegetation meets or exceeds the buffer requirements.

~~(e)~~ No vehicles, motor or otherwise, shall be parked on landscaped areas. In all cases where a fence is constructed, the required landscaped area shall be located between the fence and property line; and the fence shall be set back the depth of the buffer as to not encroach within the landscape area. No temporary signs or other structures shall be placed on any landscaped area without issuance of a permit by the Building Inspector or Zoning Administrator.

(f)(e) Driveways, sidewalks, and similar facilities may traverse perimeter landscaped areas.

(G) Grass and ground cover. Ground cover shall be placed or planted on all disturbed portions of exposed ground or earth not occupied by natural or other landscape material.

(H) Screening of refuse containers.

(1) All dumpsters shall be screened on three sides by a fence. The screening shall exceed the height of the intended container by 12 inches.

(2) The opening for the removal of trash pickup shall allow for a clearance of 12 inches on each side of the container and 24 inches at the rear of the container. Design shall be approved by the Department of Public Services, Public Works Division.

(I) Landscaping at driveways and intersections.

(1) A minimum sight triangle shall be maintained at all driveways and street intersections. Within the sight triangle, no plant material, signage or any other obstruction shall interfere with an individual's vehicle sight line. No plant material shall exceed 30 inches in height at maturity; trees shall be trimmed so that branches are at least seven feet above curb level.

(2) The minimum sight triangle for driveways shall be 10 feet by 20 feet on each side of the driveway and shall be measured as follows:

(a) Begin at the point where the edge of the driveway intersects with the street right-of-way line;

(b) From this point, measure 20 feet along the street right-of-way line, away from the driveway edge;

(c) From the same point, measure ten feet toward the interior of the property, along the driveway edge;

(d) Connect the two points established by the above method to form the required sight triangle.

(3) The minimum sight triangle required at street intersections, other than those that intersect state-maintained roads, shall be 20 feet by 20 feet and shall be measured as follows:

(a) Begin at the property corner point where the right-of-way lines of both streets intersect;

(b) From this point, measure 20 feet along the right-of-way line in each direction;

(c) Connect the two points established by the method above to form the required sight triangle.

(J) Irrigation.

(1) All required landscape areas shall be irrigated or utilize plants which are drought tolerant.

(2) Irrigation plans shall be submitted for review. This is in addition to the landscaping plan. Irrigation plans shall show location, size and type of sprinkler heads and whether the system is automatic or manual.

(3) Irrigation systems shall minimize spray onto any pedestrian or vehicular access or abutting property.

(4) Water preservation should be considered in the design of all irrigation systems.

(K) Landscape maintenance. To encourage the continued maintenance of landscaped areas, the owner shall be responsible for:

(1) Landscape areas shall be properly maintained. The owner shall be notified in writing by the zoning official of the town of any areas which are not being properly maintained, and the owner shall, within 15 calendar days of receipt of the notice, restore the landscaped area to a satisfactory condition, meet the requirements of this code.

(2) Replacement of plant material shall occur only after approval of a landscaping plan by the zoning official of the town.

(3) A vegetative buffer which has been in place for three years or more, as set out in division (F)(2)(a) of this section, shall be replaced with plant material that meets the minimum maturity requirements set out in this chapter. An exception will be made when vegetation is damaged or destroyed by fire, flood, hurricane or other acts of God when the damage or removal was not caused by or contributed to by the owner, occupant or user, and shall be replaced with plants that meet minimum requirements of this code after approval of a landscaping plan by a zoning official.

(L) Plant material.

(1) No artificial plant life or other facsimile shall be permitted except by prior approval. Suggested plant lists are provided in Appendix A, Table A and Table B, which give numerous choices as to the type of plants native to the area which best suit the climatic conditions. These choices are recommended suggestions.

(2) Plants shall be sufficiently sized to ensure screening within three years. Where a vegetative screen is required, plant materials shall be sufficiently sized as practicable to ensure obscenity within three years. Seedling plants may be used where berms or structures are required or where the proposed use is contiguous to a street or vacant land that does not have proposed development in the review process. (See Appendix A).

(3) On a corner lot which abuts a state maintained right-of-way in any district, no planting, structure, sign, fence, wall or other obstruction to vision more than three feet in height shall be placed or maintained within the triangular area formed by the intersecting street right-of-way lines and a straight line connecting a point ten feet from the intersection along the intersecting street with a point 70 feet from the intersection along the state maintained right-of-way.

(M) Tree preservation within town rights-of-way.

(1) The town may remove existing trees within town rights-of-way.

(2) Property owners or their agents may also remove trees within town-owned rights-of-way as follows:

(a) The installation of a driveway(s) shown on an approved site plan with the prior written permission of the town.

(b) With an approved restoration plan showing the replacement of removed trees at a one to one ratio or in compliance with division (F)(2)(b) and Appendix A.

(c) With an approved plan for tree thinning or removal of dead or deceased trees.

(3) An on-site meeting with the owner or their agent shall be held with a member of town staff to identify all trees to be removed. Trees marked for removal shall be noted on the site plan and flagged on site. The Planning and Inspections Department shall issue a tree removal permit after approval of the site plan. The permit will expire 180 days from the date of issuance. (Brush, vines and trees with less than a two-inch diameter measured at four and a half feet existing grade may be removed without restriction.)

(N) Regulation of above-ground appurtenances, facilities and/or structures associated with a gas utilities system. Any above ground appurtenances, facilities or structures (except buildings which are occupied and are governed by other provisions of the Kill Devil Hills Town Code), the meter and valve attached to an individual customer's structure and any required markers indicating or designating that a natural gas pipeline is buried below, constructed as a part of a gas utilities system within the town for the production, transmission, distribution and sale of gas, shall be screened with vegetative buffers as follows:

(1) All appurtenances, facilities or structures shall not be visible from ground level to a point eight feet above ground level.

(2) Buffers shall consist of trees or shrubs permitted in Appendix A of this chapter.

(3) Plants shall be of a size and planted at such intervals that they will reach full maturity and/or provide the full screening required herein within three years from the date of the completion of construction of such appurtenance, facility or structure.

(4) The franchisee for such gas utility system shall keep, replace and maintain the vegetative buffer required herein such that at all times the vegetation is alive and, after the first three years, that the full eight foot buffer is at all times in place.

(5) Failure to comply with the terms of this section, in addition to any other remedies available under the provisions of the town code, the town may plant or replace such vegetative buffer to comply with the terms of this section and all costs thereof shall be charged to franchisee

This amendment to Chapter 153, Zoning, shall be in full force and effect from and after the ____ day of _____, 2024. Adopted and approved by the Board of Commissioners of the Town of Kill Devil Hills at a regular meeting held on the ____ day of _____, 2024, by a vote of ____ in favor and ____ opposed.

SEAL

John Windley
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 _____, 2024, at _____ .m.

James Michael O'Dell
Town Clerk

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: §153.073 Landscaping Requirements – Modify Buffer Requirements for Commercial Use(s)

Approval/Denial: Planning Board finds that the §153.073 Landscaping Requirements – Modify Buffer Requirements for Commercial Use(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 4 to 0, this the Nineteenth day of December, 2023.

Attest:



Planning Board Chairman



Secretary of Planning Board