



TOWN OF KILL DEVIL HILLS

Land Where Flight Began

NOTICE OF PUBLIC MEETING

NOTICE IS HEREBY GIVEN that on Tuesday, February 13, 2024, 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 Office of the Town Clerk, 102 Town Hall Drive. To schedule an inspection time, contact the Department at 252-449-5300. 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. 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 December 19, 2023, meeting

Public Comment

Response to Public Comment

Ongoing Business

New Business

1. Proposed Zoning Amendments - §153.355(A) Site Plan Requirements & §153.357 Site Plan Review Process for Commercial, Multi-Family and Special Use Applications: Reduce Number of Copies Required for Review Process
2. Proposed Amendments – §10 General Provisions, §150 Building Regulations, §151 Flood Damage Prevention, §152 Subdivisions, and §153 Zoning: Modify Notice of Violation, Civil Penalties, and Appeals Procedures to Clarify Procedures

Public Comment

Response to Public Comment

Board Member Comment

Adjournment

Posted this 9th day of February 2024.

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, December 19, 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, T. Dillon Heikens, Sandie Markland, Ron Seidman, II, Becky Breiholz

Members Absent: Michael Lowack and Natalie Painter

Others Present: Cameron Ray, Assistant Planning Director; Ryan Lang, Senior Planner; and Jennifer Stecher, Deputy Town Clerk

Call to Order

At 5:30 p.m., Chairperson Howard Buchanan called the Tuesday, December 19, 2023, meeting of the Kill Devil Hills Planning Board to order and welcomed everyone present.

Agenda Approval

Ron Seidman moved to approve the agenda for this meeting. Becky Breiholz seconded the motion, which was approved by a unanimous, 4-0, vote.

Approval of the Minutes of the October 17, 2023 meeting

Mr. Seidman moved to approve the October 17, 2023, meeting minutes, as presented. Sandie Markland seconded the motion, which was approved by a unanimous, 4-0, vote.

Public Comment

Response to Public Comment

Ongoing Business

1. Proposed Zoning Amendment - 153.310 Cottage Courts & 153.311 Cluster Homes – Proposed modification to Cottage Court and Cluster Homes Regulations

At the October 17, 2023, Planning Board meeting, the proposed amendment was tabled by the Planning Board for further review.

On August 14, 2023, the Board of Commissioners directed staff to prepare an amendment for additional regulations in 153.310 Cottage Courts and 153.311 Cluster Homes. Those sections include minimum lot dimensions, minimum lot area, size and arrangement standards, minimum building separations, and driveway access standards. In addition to the listed requirements, these

uses are required to comply with all development standards of the zoning district where the development is located (OIR, Commercial, RL).

Cottage Courts and Cluster Homes were originally adopted into the zoning ordinance to provide additional options for development, especially on the oceanfront as an incentive instead of large single-family dwellings. In 2022, density requirements were adopted for these uses in both the Ocean Impact and Commercial Zoning Districts to regulate the density of these developments consistently with other similar development types. Since the adoption of the ordinance, three Cluster Home/Cottage Court developments have been approved by the Town for construction. During the plan approval process and construction of these projects, concerns have been conveyed about the unforeseen effects of these developments, including structure separation, height, and perceived bulk. Staff proposed several options to the Board of Commissioners for ways the Town's Cottage Courts and Cluster Homes ordinances could be amended to address these concerns, and in response to discussion.

The meeting packet included a proposed zoning amendment to 153.310 Cottage Courts and 153.311 Cluster Homes. The proposed amendment will create an additional front yard setback in the OIR, reduce the maximum size of dwelling units, and create a tiered separation of structures, based on gross square footage and height. The proposed amendment was developed by reviewing existing cottage courts and cluster home plans and researching other municipalities' ordinances.

The group discussed varying options of square footage for both Cluster Homes and Cottage Court homes as an option to move away from giant homes on and near the oceanfront. Keeping in mind that Cluster Homes can have individual owners and Cottage Court has one owner, they are both an alternative to the excessively large homes that are built in the OIR zone, as well as decreasing the less appealing perception of bulk on the oceanfront. Staff noted the proposed chart promotes smaller development with the benefit of more homes able to fit in a Cluster Home development if lower square footage homes are built.

Mr. Buchanan asked how Staff developed the numbers that were presented in the proposed ordinance. Staff looked at other ordinances in surrounding municipalities and noted Kill Devil Hills is on the higher end for square footage. By looking at similar towns, more specifically, Nags Head requires 1,500 square feet for their maximum. Staff did agree that the smaller square footage is appropriate for the RL zone since long-term housing is more likely to be built there. Mr. Buchanan thought 2,000 square feet would still create the appearance of bulk, especially on the oceanfront. Ms. Markland preferred the 1500 square feet to 2,000 square feet. Mr. Seidman thought the smaller square footage may not be appealing from a profit standpoint to builders, but ultimately settled with 1,500 square feet. Ms. Breiholz liked 1,500 square feet. Mr. Ray said the group had the option of eliminating the bottom row of the proposed square feet table and builders have the option to apply for a zoning amendment.

Ms. Breiholz moved to forward this amended Zoning Amendment - 153.310 Cottage Courts & 153.311 Cluster Homes – Proposed modification to Cottage Court and Cluster Homes Regulations - eliminating the 1,501 – 2,000 SF option, and consistency statement to the Board of Commissioners, recommending approval. Ms. Markland seconded the motion, which was approved by a unanimous, 4-0, vote.

New Business

1. 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). The Town Code section 153.073 “Landscaping Requirements” currently includes regulations for landscaping and buffering that are 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. 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 uses from the effects of commercial uses.

Staff proposed several options to the Board of Commissioners for options the Town’s landscaping and buffer requirements could be amended to address the concerns. In response to the discussion, an amendment to 153.073 Landscaping Requirements was in the meeting packet. The amendment included clarification of buffers, increased depth of landscape buffer areas, and provided 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 increased 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 included 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 fewer new plantings required. Additionally, the amendment removes vinyl fences as an allowed material for fencing used for a landscape buffer. Staff recommended the Planning Board Review the zoning amendment to 153.073 for discussion.

Mr. Seidman made a motion to forward the Proposed Zoning Amendment – 153.073 Landscaping Requirements – Modify Buffer Requirements for Commercial Use(s) and consistency statement with approval to the Board of Commissioners. Ms. Breiholz seconded the motion, which passed with a unanimous 4-0 vote.

2. Minor Subdivision Review – Ocean Breeze Townhomes: Phase 1 – Proposed 5-Lot Minor Subdivision

A minor subdivision meeting the requirements of 152 Subdivisions was part of the meeting packet for the Ocean Breeze Townhomes: Phase 1 at 902 South Virginia Dare Trail in

the Commercial Zone. The sketch plan and preliminary plat requirements have been waived and the technical review certified by the Planning Director, consistent with §152.25. A minor subdivision requires approval by the Planning Board Chairperson before recordation. The action will be recorded for compliance with §152.25 of the subdivision ordinance.

3. **2024 Planning Board Meeting Schedule**

Ms. Markland moved to approve the proposed 2024 Planning Board meeting schedule. Mr. Heikens seconded motion, which was approved by a unanimous, 4-0, vote.

Public Comment

Duke Geraghty, Government Affairs Director, Outer Banks Home Builders Association - Mr. Geraghty is a Cottage Court and Cluster home proponent. He expressed concern that the square footage approved tonight may be too small. It may not be profitable or what people want to rent.

Response to Public Comment

Board Member Comment

Adjournment

There being no further business before the Planning Board at this time, Mr. Seidman moved to adjourn the meeting. Mr. Heikens seconded the motion, which was approved by a unanimous, 4-0, vote.

It was 6:02 p.m.

Submitted by:

Jennifer Stecher
Administrative Assistant/Deputy 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

PLANNING DEPARTMENT

February 13, 2024

Memorandum

To: Planning Board

From: Cameron Ray, Assistant Planning Director 

Subject: Proposed Zoning Amendment - §153.355(A) Site Plan Requirements & §153.357 Site Plan Review Process for Commercial, Multi-Family and Special Use Applications: Revise Number of Copies Required for Submittal

During the January 24, 2024 Board of Commissioners meeting, the Town Clerk presented a report on ways to reduce the Town's Carbon Footprint as this was one of the Board's goals for Kill Devil Hills. One item that was presented was to decrease the number of paper copies required for site plan review. After consideration, the Board directed Staff to develop an ordinance amendment to decrease the required number to five accompanied by an electronic copy.

Currently, Town code sections 153.355(A) & 153.357 require fifteen copies of plans to be submitted at each submittal, which is a minimum of three submittals for a total of 45 copies. Attached is a proposed amendment to 153.355(A) & 153.357 to decrease the required number of copies for site plan review from fifteen to five accompanied by an electronic copy. As proposed, the reduced total number of copies will significantly reduce the amount of paper resources used for the site plan review process as well as reducing the cost for applicants.

Staff recommends forwarding the attached zoning amendments to §153.355(A) Site Plan Requirements & §153.357 Site Plan Review Process for Commercial, Multi-Family and Special Use Applications and consistency statement to the Board of Commissioners with a favorable recommendation.

**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:

ADMINISTRATION AND ENFORCEMENT

§ 153.355 SITE PLAN REQUIREMENTS.

(A) Upon submission of commercial, industrial and multi-family site plans for initial staff review, the developer shall have the site plan prepared, stamped or sealed and signed by persons duly authorized by state law. The site plan shall be submitted with tentative Health Department approval and the developer shall pay all site plan review fees as required by the adopted fee schedule. Five paper ~~Fifteen~~ copies and an electronic copy of the site plan shall be delivered to the Planning Director who shall distribute same to the heads of the Public Services Department, the Police Department, the Fire Department and such other town officials and departments as the Board may direct. Each such department head and town official shall review the site plan and report any comments or recommendations in writing to the planning staff at which time the planning staff shall meet with the site plan preparer to address recommendations and comments for revision.

§ 153.357 SITE PLAN REVIEW PROCESS FOR COMMERCIAL, MULTI-FAMILY AND SPECIAL USE APPLICATIONS.

(A) Prior to preparing a site plan for commercial, multi-family and special use applications, the preparer should obtain a site plan requirements list from the Planning Department. This check list covers most items required on site plans, and the site plan preparer should address all items on the list before submitting a site plan. Applicants are encouraged to review their particular cases with the staff in a sketch plan meeting prior to submission of formal application. A sketch plan review by the Planning Board may be recommended.

(B) (1) On or before the third Tuesday of the month prior to Planning Board review, site plan preparer submits the following to the Planning Department staff:

(a) Five paper ~~Fifteen~~ copies and an electronic copy of the site plan, all items on checklist addressed and an engineer's seal on the plan;

(b) Letter of tentative Health Department approval, from the local or state agency having jurisdiction;

(c) Site plan review fee.

(2) The application is then circulated to the appropriate town departments for staff review I.

(C) Staff comments I due to Planning Department on Monday following receipt of plans.

(D) On the fourth Tuesday of the month, site plan preparer meets with the planning staff for a preliminary review of the site plan. This meeting will include discussion of recommendations from the town departments.

(E) On the first Tuesday of the following month, the site plan preparer submits [five paper](#) 15 copies [and an electronic copy](#) of the site plan, revised to address issues raised by the staff at the preliminary site plan review meeting.

(F) On the following Wednesday, staff review II begins.

(G) On the following Monday, staff comments II are due to the Planning Department.

(H) On the second Friday of the month, Planning Board packets will be ready. Copies of the Planning Department staff comments to the Planning Board will be available to site plan preparers. Comments can be obtained after 1:00 p.m. Friday at the Planning Department.

(I) On the third Tuesday of the month, the Planning Board will review the site plan. They will make recommendations to the Board of Commissioners such as: approval as submitted, approval with conditions, disapproval or that the plan be tabled to allow the preparer to address the Planning Board's concerns. In the event that the plan is tabled by the Planning Board, the tabling motion shall expire two years from the date of the tabling motion. Such plan shall be reconsidered only after the applicant:

(1) Pays the full site plan review fee; and

(2) Resubmits the plan through the prescribed site plan approval process as specified in this chapter.

(J) If the Planning Board forwards the plan to the Board of Commissioners, the site plan preparer must submit [five paper](#) 15-copies and [an electronic copy](#) of the site plan, addressing any and all conditions, to the Planning Department by the fourth Tuesday of the month in order to be considered at the Board of Commissioners' regular meeting the next month.

(K) On the first Monday of the following month, staff comments and revised site plan will be sent to the Administration Department by 5:00 p.m.

(L) After 1:00 p.m. on the Friday before the Board of Commissioners meeting, copies of staff comments can be obtained at the Administration Department.

(M) The Board of Commissioners will review site plans on the second Monday of the month. At that time the Board of Commissioners will approve, conditionally approve, disapprove or table the proposed project.

(N) Once a site plan has the Board of Commissioners' approval, the Building Inspector may issue a building permit during the next 365 days, provided that all other requirements of this chapter and other applicable town ordinances are met. If a building permit is not secured within 365 days from final approval of the site plan, the site plan approval expires and the applicant must resubmit the site plan for review by the Planning Board and the Board of Commissioners. In the event the applicant certifies to the Planning Director that there have been no intervening ordinance or regulatory changes affecting siting and use and there is no significant change in the site plan design, then the Planning Director may certify such conditions. Upon such certification, the Planning Director may give the applicant 90 days in which to secure a building permit. In the event no building permit is secured within the 90-day period, the site plan approval extension shall expire and the site plan must be resubmitted through the prescribed site plan approval process as specified in this chapter.

(O) Rejected site plans may be resubmitted in accordance with this chapter when redrafted to meet the specifications of this chapter and upon payment of the required fees.

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 – §153.355(A) Site Plan Requirements & §153.357 Site Plan Review Process for Commercial, Multi-Family and Special Use Applications: Revise Number of Copies Required for Submittal

Approval/Denial: Planning Board finds that the Proposed Zoning Amendment – §153.355(A) Site Plan Requirements & §153.357 Site Plan Review Process for Commercial, Multi-Family and Special Use Applications: Revise Number of Copies Required for Submittal 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 thirteenth day of February, 2024.

Attest:

Planning Board Chairman

Secretary of Planning Board

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

PLANNING DEPARTMENT

February 13, 2024

Memorandum

To: Planning Board

From: Cameron Ray, Assistant Planning Director 

Subject: Proposed Amendments – §10 General Provisions, §150 Building Regulations, §151 Flood Damage Prevention, §152 Subdivisions, and §153 Zoning: Modify Notice of Violation, Civil Penalties, and Appeals to Clarify Procedures

Attached are proposed amendments that have been prepared to modify the Town's notice of violation, civil penalties, and appeals procedures for clarification. The amendments are to the following chapters; §10 General Provisions, §150 Building Regulations, §151 Flood Damage Prevention, §152 Subdivisions, and §153 Zoning.

The proposed amendment to Chapter 10 General provisions includes the addition of definitions and revisions for consistency with the definitions. The proposed definitions are "Civil Penalty" and "Violation" and are being proposed so that it is clear what these items are when referred to in portions of Chapter 10. Additionally, Chapter 10 includes language revisions and is restructured to clarify verbiage to be consistent with definitions while being more organized for the interpretation for Town staff and the public in regards to violations, who is authorized to issue violations, civil penalties, and appeals to violations.

The proposed amendment to Chapter 150 Building Regulations provides a new section for appeals to decisions made by a building inspector in regards to the enforcement of the North Carolina Building Code. Appeals to these decisions are required by NCGS to be heard by the North Carolina Department of Insurance and the amendment provides reference to code for this process.

The proposed amendment to Chapter 151 Flood Damage Prevention revises the appeal board for corrective procedures appeals to the Board of Adjustment, which is the appropriate board to review an appeal of this ordinance. Additionally, a new section was added for all appeals of Chapter 151 to provide proper procedure by reference.

The proposed amendment to Chapter 152 Subdivisions restructures the section for violations and appeals to be at the end of the ordinance to be consistent with other Town code sections. Additionally, the amendment adds a new section for all appeals to the Subdivision ordinance and provides proper procedure by reference

**AN ORDINANCE AMENDING THE KILL DEVIL HILLS TOWN CODE,
CHAPTERS 10, GENERAL PROVISIONS; 150 BUILDING
REGULATIONS; 151 FLOOD DAMAGE PREVENTION; 152,
SUBDIVISIONS; AND 153, ZONING**

BE IT HEREBY ORDAINED BY THE Kill Devil Hills Board of Commissioners that Chapters 10, General Provisions; 150, Building Regulations; 151, Flood Damage Prevention; 152, Subdivisions; and 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:

CHAPTER 10: GENERAL PROVISIONS

§ 10.05 DEFINITIONS.

(A) *General rule.* Words and phrases shall be taken in their plain, or ordinary and usual sense. However, technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.

(B) *Definitions.* For the purpose of this code, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CIVIL PENALTY. Fines against a responsible party for violation(s) of Town Code

VIOLATION. An action that goes against, violates, breaks, or is contrary to the provisions of Town, State, or Federal Code.

§ 10.18 VIOLATIONS.

(A) Violations of any and all of this Code of Ordinances, shall subject the offender to remedies hereinafter provided; except, that where the General Statutes of North Carolina provide specific civil remedies for violations of provisions of this Code adopted pursuant to such statutes, such remedies available to the Town for enforcement of this Code shall be in addition to the remedies stated in this chapter.

(B) 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 provided using 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.

§ 10.18~~19~~ AUTHORIZATION TO ISSUE CIVIL CITATIONS VIOLATIONS.

The following staff positions within the town are hereby authorized to issue ~~civil citations~~ notice of violations on behalf of the Board of Commissioners:

Proposed Amendment
Chapters 10, General Provisions; 150, Building Regulations; 151, Flood Damage Prevention;
152, Subdivisions; and 153, Zoning – Modify Notice of Violation, Civil Penalties, and Appeals
to Clarify Process
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(A) Police Department - all sworn officers and animal control personnel;

(B) Planning and Inspections Department - Code Enforcement Officer; Building Code(s) Inspector; Chief Building Inspector; Zoning Administrator; Senior Planner; Assistant Planning Director; Planning Director;

(C) Fire Department - Fire Marshal;

(D) Public Services Department - Solid Waste Management Supervisor Superintendent; Sanitation Team Crew Leader; Street & Stormwater Management Maintenance Supervisor; Water Plant Supervisor; Water Distribution Systems Supervisor; Assistant Public Services Director.

§ 10.9920 GENERAL CIVIL PENALTY.

(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 [the Town Code](#) ~~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 provided using 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.

§ 10.1921 APPEAL OF CIVIL CITATIONS VIOLATIONS.

Civil Citation A violation issued pursuant to § 10.99 10.18, except civil citation issued in violation of violations to Chapter 150, (Building Regulations); Chapter 151, (Flood Damage Prevention); Chapter 152, (Subdivision); and Chapter 153, (Zoning), may be appealed first to the head of the issuing department, or their designees, and, then, to the Town Manager, or their designee, if the appealing party finds the department head's decision unacceptable in accordance with this section. Those issued under Title XV—Land Usage section Chapter 151, Flood Damage Prevention; Chapter 152, Subdivision; and Chapter 153, Zoning, sections of the code shall follow procedures outlined in § 153.322. Those issued under Chapter 150, Building Regulations, of the code shall follow procedures outline in §150.31.

An appeal of a ~~civil citation~~ violation to § 10.18 shall adhere to the following procedure:

(A) To be considered, an appeal of a violation shall be submitted in writing to the Town Clerk within 14 days from the date the civil violation is issued.

(B) Upon receipt, the Town Clerk shall forward the appeal to the department head for review and action to either reverse or affirm the issuance of the ~~civil citation~~ violation. In their

consideration of the appeal request, the department head shall include written and/or oral comment from the appealing party and the staff member who issued the ~~civil citation~~ violation. The department head shall review and act on the appeal as soon as possible ~~or within~~, but in no instance more than 30 days ~~of~~ from the date of receipt of the appeal ~~to complete this process~~.

(C) In the event the appealing party is dissatisfied with the department head's action to either reverse or affirm the issuance of the ~~civil citation~~ violation, a second appeal request may be submitted in writing to the Town Manager by the appealing party not later than five days from the date the first appeal is ~~held~~ ruled upon, and this second appeal shall be ~~held~~ acted upon as soon as possible ~~or within~~, but in no instance more than 30 days of the department head's decision.

(D) After deliberation, the Town Manager may reverse or affirm the decision of the department head on the issuance of the ~~civil citation~~ violation.

(E) In the event the appellant has exhausted all administrative remedies with the town, then they may file a civil action in the Superior Court for Dare County, North Carolina.

CHAPTER 150: BUILDING REGULATIONS

§ 150.31 APPEALS OF ENFORCEMENT OF THE NORTH CAROLINA BUILDING CODE.

(A) Whenever the building inspector shall reject or refuse to approve the mode or manner of construction proposed to be followed or materials to be used in the erection or alteration of a

Proposed Amendment

Chapters 10, General Provisions; 150, Building Regulations; 151, Flood Damage Prevention; 152, Subdivisions; and 153, Zoning – Modify Notice of Violation, Civil Penalties, and Appeals to Clarify Process

building or structure as a result of violation(s) of the North Carolina Building Code (“Code”), or when it is claimed that the provisions of this Code do not apply or that an equally good or more desirable form of construction can be employed in any specific case, or when it is claimed that the sure intent and meaning of this Code or any of the regulations thereunder have been misconstrued or wrongly interpreted, the owner of such building or structure, or his duly authorized agent, may appeal from the decision of the building inspector to the commissioner of insurance or other official specified in G.S. 143-139.

CHAPTER 151: FLOOD DAMAGE PREVENTION

§ 151.43 CORRECTIVE PROCEDURES.

(A) *Violations to be corrected.* When the Floodplain Administrator finds violations of applicable state and local laws; it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.

(B) *Actions in event of failure to take corrective action.* If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice by certified or registered mail to the owner's last known address or by personal service, stating:

- (1) That the building or property is in violation of the floodplain management regulations;
- (2) That a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten days after the date of the notice, at which time the owner shall be

entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and

(3) That following the hearing, the Floodplain Administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.

(C) *Order to take corrective action.* If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of this chapter, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60 calendar days, nor more than 180 days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.

(D) *Appeal.* Any owner who has received an order to take corrective action may appeal the order to the ~~local elected governing body~~ [Board of Adjustment](#) by giving notice of appeal in writing to the Floodplain Administrator and the [Town Clerk](#) within ten days following issuance of the final order [and follow the procedures outlined in §153.322](#). In the absence of an appeal, the order of the Floodplain Administrator shall be final. The ~~local governing body~~ [Board of Adjustment](#) shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

(E) *Failure to comply with order.* If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the ~~governing body~~ [Board of Adjustment](#) following an appeal, the owner shall be guilty

of a Class 1 misdemeanor, pursuant to G.S. § 143-215.58 and shall be punished at the discretion of the court.

§ 151.45 APPEALS.

Appeals to the enforcement or violations issued pursuant to this chapter shall be appealed to the Board of Adjustment and follow the procedures outlined in §153.322.

CHAPTER 152: SUBDIVISIONS

§ 152.598 RECORDING OF EXEMPT PLATS.

(A) Any plat required to be recorded in the office of the Dare County Register of Deeds of land situated in the town, which complies with G.S. § 160D-802 as an exempt plat, may be signed and certified by the Town Planner to be in compliance with such exemption statute.

(B) The combination or recombination of portions of previously subdivided and recorded lots, if the total number of lots is not increased, the combination will not create or increase any nonconformities of the town code, and the resultant lots are equal to or exceed the standards of the town as established by this chapter, or the resultant lot(s) will be equal to or less nonconforming by area.

(C) The division of land into parcels greater than ten acres, if no street right-of-way dedication is involved.

(D) The public acquisition by purchase of strips of land for the widening or opening of streets.

(E) The division of a tract of land in single ownership, the entire area of which is no greater than two acres, into not more than three lots, where no street right-of-way dedication.

§ 152.589 VIOLATIONS.

Any person who, being the owner, or agent of the owner of any land located within the jurisdiction of this chapter, transfers or sells such land by reference to, exhibition of, or any other use of a plat showing a subdivision of such land, before such plat has been properly approved in accordance with this chapter and recorded in the Office of the Register of Deeds, shall be guilty of a misdemeanor. The description of metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from the penalties provided therefore. The town may also seek injunctive relief for the illegal subdivision, transfer, conveyance or sale of land.

§ 152.60 APPEALS.

Appeals to the enforcement or violations issued pursuant to this chapter shall be appealed to the Board of Adjustment and follow the procedures outlined in §153.322.

CHAPTER 153: ZONING CODE

ADMINISTRATION AND ENFORCEMENT

§ 153.365 ENFORCEMENT.

(A) Any work or activity subject to regulations pursuant to this chapter or other applicable local development regulations or any state law delegated to the local government is undertaken in substantial violation of any state to local law, or in a manner that endangers life or property, staff may order that work or activity to be immediately stopped.

(B) When an activity is undertaken in violation of the development regulations adopted pursuant to this chapter or other local development regulations or any state law delegated to the local government for enforcement purposes, a notice of violation ~~can~~ shall be issued in accordance with § ~~40.99~~ 10.18. Notice of violation may be posted on the property.

§ 153.366 APPEALS.

Appeals to the enforcement or violations issued pursuant to this chapter shall be appealed to the Board of Adjustment and follow the procedures outlined in §153.322.

This amendment to Chapters 10, General Provisions; 150, Building Regulations; 151, Flood Damage Prevention; 152, Subdivisions; and 153, Zoning, shall be in full force and effect from and after the _____ day of _____, 2024.

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 – §10 General Provisions, §150 Building Regulations, §151 Flood Damage Prevention, §152 Subdivisions, and §153 Zoning: Modify Notice of Violation, Civil Penalties, and Appeals to Clarify Procedures

Approval/Denial: Planning Board finds that the Proposed Zoning Amendment – §10 General Provisions, §150 Building Regulations, §151 Flood Damage Prevention, §152 Subdivisions, and §153 Zoning: Modify Notice of Violation, Civil Penalties, and Appeals to Clarify Procedures 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 thirteenth day of February, 2024.

Attest:

Planning Board Chairman

Secretary of Planning Board