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THE TOWN OF KILL DEVIL HILLS NORTH CAROLINA

PLANNING DEPARTMENT

March 06, 2024

Memorandum

To: Debbie Diaz, Town Manager

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

The proposed amendment to Chapter 153 Zoning Code revises the enforcement section to reference the proper section 10.18 for violations of the Town Code. Additionally, the amendment adds a new section for all appeals to the Zoning ordinance and provides proper procedure reference.

These amendments do not change how violations or appeals are handled day to day. The purpose is to clarify the existing language to make it more user friendly and easy to understand to the public.

On February 13, 2024, the Planning Board reviewed the attached proposed amendments to §10 General Provisions, §150 Building Regulations, §151 Flood Damage Prevention, §152 Subdivisions, and §153 Zoning and recommended approval. Staff recommends setting the required public hearing for March 27, 2024.

**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.

§ 10.1819 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:

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152, Subdivisions; and 153, Zoning – Modify Notice of Violation, Civil Penalties, and Appeals
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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.

§ 10.99~~20~~ 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,

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\$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

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 § ~~10.99~~ 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

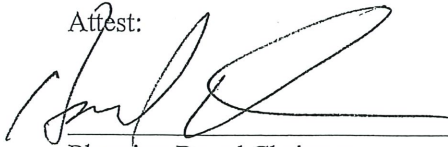
Proposed Amendment Title: Proposed Zoning Amendment – §10 General Provisions, §150 Building Regulations, §151 Flood Damage Prevention, §152 Subdivisions, and §153 Zoning: Modify Notice of Violation, Civil Penalties, and Appeals to Clarify Procedures

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 6 to 0, this the thirteenth day of February, 2024.

Attest:



Planning Board Chairman



Secretary of Planning Board