

A. Planning Board Agenda

Documents:

[FEBRUARY 2019 AGENDA.PDF](#)

B. Planning Board Packet February 2019 (PDF)

Documents:

[FEBRUARY 2019 AGENDA PACKET.PDF](#)



AGENDA
Town of Nags Head Planning Board
Nags Head Municipal Complex Board Room
Tuesday, February 19th, 2019; 9:00 a.m.

A. Call To Order

B. Approval of Agenda

C. Public Comment/Audience Response

D. Approval of Minutes – January 15, 2018

E. Action Items

1. Discussion/recommendation of short-term rental registration ordinance and associated zoning amendments.

F. Report on Board of Commissioners Actions from January 2, 2019

1. Public Hearing to consider a zoning ordinance text amendment submitted by Brian Rubino of Quible and Associates, P.C. on behalf of Miller's Waterfront Restaurant and Tale of the Whale Restaurant to allow a new use, docking facilities with transient boats slips, in the C-2, General Commercial Zoning District and in the Commercial-Outdoor Recreational Uses Overlay Zoning District. The Board of Commissioners approved the request with a limitation of four slips per facility and including additional conditions to address public safety, land use compatibility, and environmental quality.

G. Town Updates- as requested

1. Updates as requested.

H. Discussion Items

1. Discussion of draft Unified Development Ordinance (UDO) and comments.

I. Planning Board Members' Agenda

J. Planning Board Chairman's Agenda

K. Adjournment



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**Town of Nags Head
Planning Board
January 15, 2019**

The Planning Board of the Town of Nags Head met in regular session on Tuesday, January 15, 2019 in the Board Room at the Nags Head Municipal Complex.

Deputy Town Manager/Planning Director Andy Garman called the meeting to order at 9:05 a.m. as a quorum was present. Mr. Garman called for nominations for Chair for Calendar Year 2019.

Members Present

Kristi Wright, Megan Vaughan, Mark Ballog, Mike Reilly, Meade Gwinn, Megan Lambert, David Elder

Members Absent

None

Others Present

Andy Garman, Kelly Wyatt, Holly White, Lily Nieberding

Election of Chair and Vice Chair for Calendar Year 2019

Meade Gwinn moved to nominate Megan Vaughan to serve as Chairperson. Mike Reilly seconded the motion. There being no other nominations a vote was taken, and the motion passed by unanimous vote.

Mr. Garman turned the meeting over to newly appointed Chair Vaughan. Chair Vaughan asked for nominations for Vice-Chair.

Mike Reilly moved to nominate Kristi Wright as Vice Chair. Megan Lambert seconded the motion. There being no other nominations a vote was taken, and the motion passed by unanimous vote.

Approval of Agenda

There being no changes to the agenda, Mike Reilly moved that it be approved as submitted. Kristi Wright seconded the motion and it passed by unanimous vote

Public Comment/Audience Response

None

Approval of Minutes

There being no changes, David Elder moved that the minutes from the December meeting be approved as presented. Kristi Wright seconded the motion and it passed by unanimous vote.

Action Items

None

Establishment of Regular Meeting Dates for Calendar Year 2019

Chair Vaughan reviewed the proposed meeting dates with the Board. After some discussion David Elder moved to approve the Calendar as presented. Meade Gwinn seconded the motion and it passed by unanimous vote.

Report of Board of Commissioners Actions

Chair Vaughan reviewed recent Board Actions with Ms. Wyatt's assistance:

Public Hearing to consider a zoning ordinance text amendment submitted by Quible and Associates, P.C. on behalf of Miller's Waterfront Restaurant and Tale of the Whale Restaurant to allow a new use, docking facilities with transient boats slips, in the C-2, General Commercial Zoning District and in the Commercial-Outdoor Recreational Uses Overlay Zoning District. The Commissioners tabled the item to the Feb 6th, 2019 Board meeting and directed staff and the Town Attorney to render a definitive opinion at that time as to whether or not the proposal is consistent with the Town's Land Use Plan. Staff was also directed to address questions brought forward by the Board.

Consideration of a site plan amendment submitted by LKC Engineering, PLLC on behalf of Carolina Water Service Inc. of NC for numerous site improvements at the existing Village at Nags Head Waste Water Treatment Plant (WWTP). The Commissioners approved the Site Plan as presented.

Town Updates

None

Discussion Items

Discussion and presentation of FOCUS Nags Head Draft Unified Development Ordinance.

Principal Planner Holly White presented the FOCUS Nags Head Draft UDO.

Ms. White explained that a draft of the UDO was distributed to the Planning Board on December 20, 2018. According to the Town Manager, the Board of Commissioners will be discussing the draft UDO at its January retreat. In order to facilitate this meeting date, Staff have developed a schedule that will allow the Technical Committee and the Planning Board to provide any major comments to the Board in advance of its discussion. Ms. White noted that it is anticipated that the Board of Commissioners and the Planning Board will have a joint workshop in February 2019 to discuss the UDO.

Ms. White stated that the UDO (Unified Development Ordinance) represents a significant reorganization of the land use regulations within the Town Code.

The primary chapters that are included within this UDO are as follows:

Chapter 22 – Flood Damage Prevention

Chapter 28 – Soil Erosion and Sedimentation Control

Chapter 34 – Stormwater Management
Chapter 38 – Subdivisions
Chapter 48 – Zoning

The UDO is divided into 11 Articles and the main goals of the UDO were to:

- Reorganize and update the Town code into a user-friendly format
- Implement portions of the Comprehensive Plan with an emphasis on key themes (Appendix A)
- Provide consistency with NC State Statutes
- Address staff/board concerns as well as policy issues

Ms. White proceeded to summarize and lead a discussion of the draft UDO and major changes:

Article 1 contains the purpose and intent for the UDO along with a basis for the town's authority to adopt this type of document. Additionally, this article addresses conflicts with other regulations/laws, conformance with adopted plans, fees, and violations.

There were no major changes to this article as much of the language was carried from the existing code of ordinances.

Article 2 consolidates all the administrative and quasi-judicial authority into one article. Previously, these were contained in separate chapters. Portions of this article that address Planning Board and Board of Adjustment composition, terms, powers and duties etc. were carried forward from the existing code of ordinances. This article also addresses conflicts of interest.

Article 3 consolidates and clarifies the processes for all legislative and quasi-judicial procedures. The majority of the updates in this section are needed to address changes in state law. Previously, these were scattered throughout the code of ordinances in separate sections/chapters. This allows ease of use for both staff and public to find these requirements in one article.

Legislative procedures include UDO text and zoning map amendments. Quasi-judicial procedures include appeals, variances, conditional use permits, and subdivision waivers. Newly created tables help to consolidate and visualize all of these processes in a simple table.

This article also standardizes the notification requirements and the reviewing bodies for many of these procedures with the use of tables. For example, stormwater variances were considered by the Board of Commissioners. In the draft UDO, stormwater variances are suggested to be heard by the Board of Adjustment in order to standardize notices and procedures.

Article 4 establishes a clear and comprehensive process for development within the town. Previously these processes were scattered throughout the code of ordinances. The draft UDO makes it clearer what is reviewed by Staff, Planning Board, and the Board of Commissioners. The use of tables and flowcharts also helps to orient both staff and the public to the review process needed for specific development proposals.

Ms. White confirmed for Mr. Gwinn that the UDO Administrator is the Planning Director or their designee.

Ms. White stated that at their last meeting, the Technical Committee requested an additional flowchart to clarify the decision-making model. Chair Vaughan noted that the flowcharts and tables were helpful.

Ms. Garman noted that the draft UDO proposes an increase in the time major site plans and major subdivision preliminary plats have to be submitted in advance of Planning Board meetings. Previously, plans were required to be submitted 30 days in advance of a Planning Board meeting. The draft language proposes an additional 45 days. This allows more time between submittal of the site plan and technical review, as well as between technical review and the deadline when an applicant returns corrections on the site plan before planning board. This results in more complete site plans as a result of more time both for staff review and needed corrections.

Mr. Garman noted that if this is approved as part of the UDO later this year, Staff will be bringing the revised Submittal Calendar (approved earlier today) back to the Planning Board for their consideration.

In addition, Mr. Garman explained that the draft UDO adds language making a pre-application meeting and sketch plan necessary for certain types of development.

Article 5 - Nonconforming Situations - regulates lots, structures, sites and uses of land which were conforming at the time of their creation or construction but no longer adhere to the requirements of this UDO.

There were no major changes to Article 5; a section was removed that addressed mobile homes. This was no longer needed because this use is no longer allowed.

Article 6 establishes zoning districts, provides a description of the district, and outlines the uses allowed by right or conditional use (as contained in the Table of Permitted Uses). Article 6 outlines all the zoning districts located within the town. These include primary zoning districts, overlay districts, and special districts.

The C-1 district was previously in the town code. In the draft UDO the C-1 district is envisioned to address development on NC 12. This idea is addressed through policy by the Comprehensive Plan where the plan identifies the need to differentiate the Bypass (US 158) from the Beach Road (NC 12). The current zoning along US 158 and NC 12 is the same, C-2. Additional uses were added to the C-1 district in the Permitted Uses table to achieve the desired vision for Beach Road development. The C-1 is currently not mapped. In addition to the addition of new uses in this district, the Commercial Design standards would also work to achieve the overall vision for Beach Road.

The draft UDO contains a consolidated table of permitted uses. While the existing town code had a table of permitted uses, uses were also listed in a separate section for each zoning district. In the draft UDO, uses will only be listed in the table of permitted uses. Additionally, a list of prohibited uses has been developed and included in Article 6 in order to meet new state law requirements. The table of permitted uses is organized by zoning district, use category (i.e. residential, retail, service, accessory), and use type. Uses are shown as permitted by right (P), permitted with supplemental regulations (PS), conditional (C), or conditional with supplemental regulations (CS). Uses that have supplemental standards would reference Article 7. Supplemental Standards.

In addition to the organizational changes of the table of permitted uses, several new uses were added and expanded to or deleted from districts.

Article 7- Supplemental Regulations - For any use which requires the issuance of a conditional use permit, supplemental use regulations may be added in addition to any other conditions placed on the

use by the Board of Commissioners. The conditions may impose greater restrictions on a particular use than those documented in the Supplemental Regulations section. All uses included in these supplemental regulations must also comply with all other requirements of this UDO. Where the requirements of these supplemental regulations may conflict with other provisions of the UDO, the requirements contained within the supplemental regulations shall prevail.

In the town code, each zoning district listed every use permitted, permitted with supplemental standards, allowed by conditional use, and conditional use with supplemental standards. For every use in the district, all the supplemental standards were listed and if the use was repeated in different zoning districts the supplemental standards were listed each time. In the draft UDO, the supplemental standards are consolidated in Article 7.

Supplemental standards that are new or modified are outlined below:

- Section 7.1 Cluster housing- In current town code, there are three types of cluster housing. Two of the three types of cluster housing were deleted from C-2 and SED-80.
- Section 7.3 Accessory Dwelling- new use. Implemented to be consistent with the Comprehensive Plan.
- Section 7.5 Multi-Family Dwellings/Townhouses- Adjusted setbacks in C-2, Added provision for affordable housing density (needs to be further discussed), added buffers adjacent to residential in C-2 and SPD-20, and reduced the unit size in C-2.
- Section 7.7 Home Occupations- new use, added Class 2 & 3. Class 1 home occupations are permitted in any single-family residential dwelling unit. The regulations for Class 1 Home Occupations are consistent with the regulations currently in the town code. The Class 2 Home Occupation is allowed in both a principal or accessory structure. The services are limited to real estate sales, law practice, accounting services, handmade goods (including baked goods as long as they are sold off-site), and other similar professional occupations. Class 3 Home Occupations is allowed in both a principal or accessory structure. The services are limited to the creation, display, or sale of artistic wares, crafts, pieces of art, sculptures, or other creations, and handmade goods (including baked goods). All home occupation uses must be secondary and incidental to the primary residential use.
- Section 7.4 Food Trucks- new use. Food Trucks generally will be allowed either along with a permitted event or on the same lot as a restaurant as long as either (1) when the principal restaurant is closed or (2) when the principal restaurant is open, provided the site contains a minimum of three (3) parking spaces in excess of the minimum parking required by this UDO.
- Section 7.12 Hotels- Generally consolidated standards for the C-1, C-2, and HO to be consistent. Removed consistent references to fire code requirements and other performance standards that applied to other commercial uses and placed in Article 10 Performance Standards. Lowered the height in the Hotel Overlay (HO) to 47 feet (consistent with the height for multifamily) from 60 feet in the current town code of ordinances.
- Section 7.21 Massage and Bodywork Therapy- Previously, when the original ordinance was written, massage therapy was not regulated by the state. Since that time a state licensure program has been developed and there are extensive state laws to cover many of the concerns previously addressed by the ordinance. Nearly the same information, along with a copy of their state license, will be presented to staff and as long as the applicant can meet the specific supplemental requirements, a permit can be granted. This will allow applicants to more quickly move through the approval process.
- Section 7.33 Mixed Use Development
 - Defined mixed use development- means a single building containing more than one type of land use or single development of more than one building, and use, under common

ownership, where the different types of land uses are in close proximity, planned as a unified complementary whole, and functionally integrated to the use of shared vehicular and pedestrian access and parking areas. Mixed use is defined by a combination of professional offices, personal services, indoor recreation facilities, retail, and/or restaurant uses in combination with residential development.

- Allows mixed use but limits the residential component. In cases of buildings containing one or two habitable floors the residential component is limited to 50%.

- In cases of a buildings containing three or more habitable floors, the residential component is limited to 66% of the total gross floor area.

- Artisans Workshop- new use. This use was developed to create flexibility for and to encourage development of art and artists in the Gallery Row-Community Center Character Area, as envisioned in the Comprehensive Plan.

The Planning Board discussed in further detail the definitions as well as what is currently allowed/not allowed when it comes to Accessory Dwellings, Granny Pods and Food Trucks.

Ms. White clarified for Mr. Ballog that Food Trucks would be permitted in two ways – as part of a permitted special event and on-site at the parent restaurant as long as there is sufficient parking. The Board and Staff also discussed the difference between a Food Truck and Concession Trailer and whether the UDO differentiates between the two. Ms. White will revise the UDO to clarify this point.

8. Article 8. Zoning District Development Standards

For each of the Town's zoning districts, the Town has established development standards including minimum lot area and width, minimum required yards (setbacks), maximum building height, and maximum lot coverage. These standards have been established to create the overall development pattern and intensity desired by the Town for certain areas consistent with the Town's goals for the built environment. Within each district, the standards for each of these items may differ depending on the type of use (i.e., commercial or residential).

In the current code of ordinances every separate zoning district lists the minimum lot area, minimum lot width, minimum front yard depth, minimum side yard depth, minimum rear yard depth, maximum building height, and lot coverage. In the draft UDO, these have been consolidated into one table for every zoning district.

Other important changes to this Article include:

- Updated language to address accessory structures with habitable space (i.e. garage with habitable space above).
8.6.3.5.3. Accessory structures located forward of the midpoint of the principal structure shall meet the principal structure setbacks. The midpoint is defined as the halfway point of the principal structure including decks measured from front to rear on the lot.
8.6.3.5.4. Accessory structures with habitable space shall meet the setbacks of the principal structure regardless of location on the lot.
- Simplified definition for height- Current definition in code of ordinances has regulations in the definition. These were removed from the definition and placed in the text of Article 8.
8.6.4.1. Measurement of height. Height means the vertical distance measured from the tallest part of a building to the ground at the base of the building. Typically, height is measured from the tallest portion of the roof to the top of the concrete slab. In cases where a concrete slab is

not present, height is measured from the tallest part of the roof to the average finished grade using the corners at the base of the building.

- Height: Flood Zone- Currently, height is measured in an AE flood zone from Regulatory Flood Protection Elevation (RFPE) or grade, whichever is greater. In the draft UDO, height for a structure in an AE flood zone with an enclosure below the RFPE shall be measured from finished grade.

8.6.4.1.1. In any AE special flood hazard area, height will be measured from the regulatory flood protection elevation or finished grade, whichever is higher. In cases where there is a ground floor enclosure below the regulatory flood protection elevation, height shall be measured from finished grade.

- Modified the language to allow a minimal floor area for coastal watch towers that is not considered as part of your three maximum habitable floors.

8.6.4.6.2.4. Coastal Watch Tower - provided it meets the regulations of Section 8.6.5, Habitable Floors, the dimensional requirements of the zoning district in which it is proposed, and the design criteria as noted in the Town of Nags Head Residential Design Guidelines.

8.6.5.4. Coastal watch towers meeting the criteria described in the Town of Nags Head Residential Design Guidelines, to include the maximum square floor area of 196 square feet, shall not be counted towards the maximum number of allowable habitable floors as prescribed in this section.

Article 9 regulates development in the Village at Nags Head. No changes were made to this article. The language was carried forward from the current code of ordinances.

Ms. White confirmed with Mr. Gwinn that Staff will be meeting with the Village this coming week to review the proposed UDO and see if there are any changes they would like added. Ms. White noted this might be an on-going process and will keep the Board updated as needed.

Article 10 includes performance standards that generally apply to development such as buffering, parking, and lighting. Additionally, Article 10 contains subdivision regulations and Commercial Design Standards:

Part I. Buffering and Vegetation Preservation General Requirements, Part II. Off-Street Parking and Loading Requirements, Part II. Sign Regulations, and Part IV. Outdoor Lighting have been revised and all relevant portions related to commercial development have been moved to Part VI. Commercial Design Standards. The portions of regulations remaining in these sections apply generally to all development.

Part II. Off-Street Parking and Loading Requirements have not been altered for residential uses. The parking table has been updated in the draft UDO to be consistent with the Table of Permitted Uses.

Part III. Sign Regulations has not been modified except to add back in the provisions for off-site advertising.

Part IV. Outdoor Lighting has not been greatly changed except to add a provision for full cut off lighting for residential.

Part IV. Commercial Design Standards include the language recently adopted by the Board of Commissioners in December but further includes provisions for both site design and site layout. This includes parking lot and driveway requirements and revised buffering requirements.

Article 11 - Environmental Regulation includes standards for Stormwater, Fill, and Runoff Management, Soil Erosion, and Sedimentation Control, and Flood Damage Prevention. No changes were made to this article, except to include the recently adopted changes to the Stormwater Requirements by the Board of Commissioners in December.

Ms. White asked the Planning Board members that as they continue to review the changes to feel free to email her with any questions/comments.

Chair Vaughan thanked Ms. White for this helpful summary as this is a very large and intricate document.

Discussion of proposed registration requirements for short-term vacation rentals within the Town.

Deputy Planning Director Kelly Wyatt explained that the Planning Board has been examining the topic of short-term vacation rentals (i.e. Airbnb and VRBO) for several months, beginning in May of 2018. Last month the Planning Board discussed its preferred management approach and requested that staff provide a draft outline/ordinance for review. Prior to bringing it back in ordinance form for the Board to vote on, Staff felt it might be good to provide some background to assist newer members with the discussion.

Ms. Wyatt proceeded to review a brief history of deliberations on this topic prepared by Staff:

- May 11, 2018, Planning Board Meeting Report and Update. On April 18, 2018 staff, members of the Planning Board and members of the Board of Commissioners attended a workshop hosted by the North Carolina Association of Resort Towns and Convention Cities to discuss regulating short-term rentals. The workshop focused on how these uses have evolved, regulatory best practices, tax collection, how to find and track host sites, legislative authority, and regulatory approaches that have been implemented or drafted in North Carolina communities to date. Following this workshop, Planning staff met with representatives from Host Compliance, a company that assists local governments with drafting enforcing regulations pertaining to short-term rentals.
- June 19, 2018, Planning Board Meeting. Following discussion, it was the consensus of the Planning Board to work towards establishing a registration requirement for short-term rentals. This would provide the town with an opportunity to begin tracking the location of short-term rentals, establishing a point of contact with operators, secure proof of insurance, and disseminate information within the North Carolina Vacation Rental Act regarding life safety measures and the remittance of occupancy tax.
- July 17, 2018, Planning Board Meeting. Staff summarized for Planning Board members a webinar hosted by the UNC School of Government regarding short term rentals and noted that we would begin working towards inventorying short-term rentals with the help of the Dare County Tax Department. Town Attorney Ben Gallop then addressed the Planning Board and led a discussion/question and answer session to discuss exemptions covered by the North Carolina Vacation Rental Act. Mr. Gallop noted that he would need to do further research to determine if the Town had the authority to require proof of insurance. Mr. Gallop cautioned the Planning Board against limiting these types of rentals only to certain areas of the Town as the entire Town is considered a resort area. Mr. Gallop also discussed the difference between renting a room in a house versus whole house rentals and how enforcement might differ. The Planning Board consensus was to develop a registration program and require the contact information of the local operator be included on the registration.
- August 17, 2018, Planning Board Meeting. Staff provided a draft ordinance that would require the registration of short-term rentals. The ordinance defines short-term vacation rentals according the North Carolina Vacation Rental Act. However, the number of days to be considered a short-term vacation rental in the Town is fewer than 30 days rather than 90 days as prescribed in the Act. Mark Cornwell, the Planning Board Chairman at the time, posed a question of how this registration process would work given that we currently only allow "Bed and Breakfast" use in the C-2, General

Commercial Zoning District. Specifically, if an operator of a short-term vacation rental comes forward to register a property located in a district other than the C-2, General Commercial District, does the town now take enforcement action to require the use to cease. The Planning Board asked staff to consider this scenario when preparing the registration process. It was also determined that staff would create a public engagement survey to solicit information from residents of the Town of Nags Head on how they felt about short-term vacation rentals and their potential concerns and impacts.

- October 16, 2018, Planning Board Meeting. Planning Staff presented a draft of the Community Engagement Survey and received input on recommended revisions and changes.

- November 20, 2018, Planning Board Meeting. Planning Staff provided members with an analysis of the survey results and requested additional time to receive additional community input.

- December 18, 2018, Planning Board Meeting. Planning Staff provided members with a breakdown and analysis of survey responses. Based upon the research and discussions that have occurred to date including the survey results, the Planning Board made the following recommendations: 1) to allow short-term rentals town-wide via a registration process, 2) to consider some type of mechanism to seek Homeowner Association approval of the rental, and 3) to require a local host operator to be registered with the Town that can be readily accessible to address any concerns. The Planning Board also asked staff to consider how the registration process would be enforced.

Based upon the recommendations from the Planning Board, Staff has drafted an ordinance which will set forth a registration requirement for short-term rentals within the Town. Short term vacation rentals, both whole house and partial home, will be permissible in all zoning districts. As part of the registration, the property owner will be requested to verify that a host operator is located within a 20-mile radius of the property to be available in a timely manner to address any concerns that may arise.

Some variations in the proposed ordinance to note:

- Whole house rentals will not be required to provide any additional parking beyond what is required for single-family dwellings.

- Partial house rentals will be required to have one (1) additional parking space beyond what is required for single-family dwellings.

- Whole house short-term vacation rentals managed by a real estate broker will not be required to register.

Ms. Wyatt anticipates that the Planning Board will consider a final draft of this ordinance at its February 19, 2019 meeting.

Ms. Wyatt confirmed for Mr. Elder that they are waiting to hear from the Town Attorney regarding HOAs and their requirements, but she believes that any issues would need to be settled between the property owners and the HOA. Mr. Garman confirmed that Staff typically is not able to enforce HOA covenants.

Chair Vaughan noted that not everyone is here for vacation and that not every short-term rental is for vacation purposes. Chair Vaughan asked that staff consider removing the word vacation from the name. Ms. Wyatt will make this revision.

Planning Board Members' Agenda

None

Planning Board Chairman's Agenda

None

Adjournment

There being no further business to discuss, a motion to adjourn was made by David Elder. The time was 11:09 AM.

Respectfully submitted,

Lily Campos Nieberding

DRAFT

STAFF REPORT

TO: Planning Board
FROM: Andy Garman, Deputy Town Manager
Kelly Wyatt, Deputy Planning Director
DATE: February 15, 2019
SUBJECT: Discussion/recommendation of short-term rental registration ordinance and associated zoning amendments.

The Planning Board has been working with planning staff for several months to develop a recommendation to manage short-term rentals. As part of this process, a community engagement survey was completed. This survey received over 580 responses with the following trends being identified:

- The majority of responses came from full-time residents and property owners living west of US Hwy 158.
- 50% of respondents have rented through an STR website and the majority had an enjoyable experience.
- 60% of respondents are aware of STR's in their neighborhood, half were comfortable with them being located there, 35% were concerned.
- Of those who noted issues; biggest concerns were parking, noise, over-occupancy and trash.
- An overwhelming majority of respondents feel it is important to have a manager or host readily available to address issues.
- Responses on where STR's should be located were relatively even throughout the town and the majority of those responding felt that STR's did offer benefits to the Town.

Based upon this input, at your December 18, 2018 meeting, it was the consensus of the Planning Board to move forward with the following recommendations: 1) to allow short-term rentals town-wide via a registration process, 2) to consider some type of mechanism to seek homeowner association approval of the rental, 3) to require proof of insurance, and 4) to require a local host operator to be registered with the Town that can be readily accessible to address any concerns.

Staff has drafted an ordinance which would achieve the recommended outcome outlined by the Planning Board. Staff has also consulted with the Town Attorney on whether we have the authority to require HOA approval or proof of insurance as part of the registration requirement. Staff will discuss this advice with the Planning Board at its upcoming meeting. The draft ordinance has been revised to reflect this input. The draft ordinance was discussed with the Board of Commissioners at its January retreat. While the Board was in general agreement on the approach and ordinance as drafted, concerns were expressed regarding how the registration process would be administered, including the specific questions that would be asked on the form and whether the process could be handled electronically. Staff is in the process of putting this information together. It is anticipated that a budgetary request will be presented to

the Board of Commissioners this year to assist with the implementation of the registration program. As a reminder, the attached ordinance includes the following provisions:

- As part of the registration, the property owner will be requested to verify that a host operator is located within a 20-mile radius of the property that would be available in a timely manner to address any concerns that may arise.
- Whole house rentals will not be required to provide any additional parking beyond what is required for single-family dwellings.
- Partial house rentals will be required to have one (1) additional parking space beyond what is required for single-family dwellings.
- Whole house short-term rentals managed by a real estate broker will not be required to register.
- The definition of bed and breakfast will now only apply to single-family dwellings where more than two rooms are being rented on a daily or weekly basis.
- The registration process will provide an opportunity to educate hosts on state and local requirements.

(DRAFT)
**AN ORDINANCE AMENDING THE CODE OF ORDINANCES
OF THE TOWN OF NAGS HEAD, NORTH CAROLINA**

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160A-174 the Town may enact and amend ordinances that define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the Town; and

WHEREAS, pursuant to N.C.G.S. § 160A-381, the Town may enact and amend ordinances regulating the zoning and development of land within its jurisdiction and specifically the location and use of buildings, structures and land. Pursuant to this authority and the additional authority granted by N.C.G.S. Chap. 160A, Art. 19 et. seq, the Town has adopted a comprehensive zoning ordinance (the "Town's Zoning Ordinance") and has codified the same as Chapter 48 of the Town Code; and

WHEREAS, pursuant to N.C.G.S. § 160A-175 the Town may adopt, establish and amend procedures for exercising remedies available for violations of the Town Code; and

WHEREAS, changes in technology have led to a new "sharing" economy where it is becoming more commonplace for individual property owners to provide rentals to individuals on a daily or nightly basis; and

WHEREAS, the Town finds that these rapid changes to the way property owners are using their property have led to unforeseen and unexpected changes in the community; and

WHEREAS, vacation rentals have always been prevalent and represent a significant portion of the local economy; and

WHEREAS, the Town Board of Commissioners has directed the Planning Board and Town Staff to evaluate the desirability and impact of short-term rentals on the community, particularly with respect to new uses which are largely unregulated; and

WHEREAS, the Town finds that property owners who are providing these services should be aware and mindful of their impact to established neighborhoods; and

WHEREAS, the Town finds that property owners should also be aware of and comply with all local, state, and federal laws, including income, sales and occupancy tax requirements; and

WHEREAS, the Town's 2017 Comprehensive Plan page 2-28 states, "In years past the town has experienced the conversion of ground floor areas to additional, illegal, living spaces and over-occupancy of single-family dwellings associated with seasonal workers and vacation rentals. The town should maintain a strong code enforcement presence in these communities and throughout the town to preserve the fabric of neighborhoods and limit nuisances associated with these practices"; and

WHEREAS, the Town finds that it is in the Town's best interest to provide some level of oversight of these uses; and

WHEREAS, the Town is proposing to establish a registration program to assist owners in understanding their responsibilities and obligations as landlords to ensure that these uses remain compatible with established neighborhoods; and

WHEREAS, the Town finds that these text amendments are consistent with the goals, objectives and policies of the Town’s adopted Comprehensive Plan, and that this action is reasonable and in the public interest.

ARTICLE II. Construction.

For purposes of this ordinance amendment, underlined words (underline) shall be considered as additions to existing Town Code language and strikethrough words (~~strikethrough~~) shall be considered deletions to existing language. Any portions of the adopted Town Code which are not repeated herein, but are instead replaced by an ellipses (“...”) shall remain as they currently exist within the Town Code.

ARTICLE III. Amendment of the Town Code.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Town of Nags Head, North Carolina, that the Town Code shall be amended as follows:

PART I. That **Town Code Chapter 12, Businesses and Licensing** be amended to add the following:

Chapter 12 - BUSINESSES AND LICENSING

ARTICLE VII. – SHORT-TERM RENTALS

Sec. 12-224. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Short-term rental means the rental of residential property for vacation, leisure, recreation, or other purposes for fewer than thirty (30) days by a person who has a permanent residence to which he/she intends to return.

Residential property means an apartment, studio, condominium, single family home, townhouse, cottage or other property devoted to residential use or occupancy by one or more persons for a definite or indefinite period.

Operator means the proprietor of any dwelling, lodging, or sleeping accommodations offered as a short-term rental, whether in the capacity of owner, lessee, sub-lessee, mortgagee in possession, licensee, or any other possessory capacity.

Sec. 12-225. - Regulations.

(a) There is hereby established a short-term rental registry. Upon offering any short-term residential rentals, all operators shall register with the town. This shall be an annual registration for each property offered for short-term residential rental and shall require the operator to provide the following:

- (1) Complete name and address of the operator. If the operator does not live within 20 miles of the short-term rental, a local contact person shall be provided as part of the registration.
 - (2) Address of each property in the town offered for short-term residential rental by the operator.
 - (3) Proof of insurance sufficient to operate the residential property as a short-term rental.
 - (4) Signed acknowledgement that the owner is aware of all local and state laws pertaining to the operation of a short-term rental, including the North Carolina Vacation Rental Act, and the requirement to pay all sales and occupancy taxes.
- (b) Registry exemptions. The following shall not be required to register pursuant to this section:
- (1) Lodging provided by hotels, motels, tourist camps, and other places subject to regulation under Chapter 72 of the North Carolina General Statutes.
 - (2) Rentals to persons having no other place of primary residence.
 - (3) Rentals for which no more than nominal consideration is given.
 - (4) Rentals that are managed by a real estate broker as defined in G.S. 93A-2(a)
- (c) Penalties. Failure to register a property within 30 days of being offered for short-term residential rental shall result in a penalty to be paid by the operator in the amount of \$500. The town may waive such penalty if the failure to register was due to no fault of the operator. Until such time as the operator pays the penalty and registers such property, the operator may not continue to offer such property for short-term residential rental. Upon repeated violation of the registration requirement as it relates to a specific property, and upon notice, the operator shall be prohibited from registering said property and from offering that property for short-term residential rental. Such prohibition may, for good cause, be appealed to the town.
- (d) Multiple violations of other laws. An operator required to register a property may be prohibited by the town from offering a specific property for short-term residential rental within the town, upon multiple violations on more than three occasions of applicable state and local laws, ordinances, and regulations, as they relate to the short-term residential rental.

PART II. That Section **48-7, Definitions of Specific Words and Terms**, be amended as follows:

Bed and breakfast means a single-family dwelling that consists of the rental of ~~one~~ ~~or~~ more than two bedrooms on a daily or weekly basis. The rooms shall not be

equipped to allow the preparation of meals, although meals may be provided to overnight guests in a common area by the proprietor of the establishment. The bed and breakfast operation shall be owner occupied and conducted by persons who are full time residents of the single-family dwelling.

Short-term rental, partial house means an owner occupied single-family dwelling that consists of the rental of up to two guest rooms for vacation, leisure, recreation, or other purposes for fewer than thirty (30) days. The partial house short-term rental should be subordinate and incidental to the principal residential use of the dwelling.

Short-term rental, whole house means the rental of an entire single-family dwelling to a group operating as one housekeeping unit for vacation, leisure, recreation, or other purposes for fewer than thirty (30) days.

PART III. That Section **48-167, Required Parking by Use**, be amended as follows:

(1) Residential and Related Uses	Required Parking
<u>Short-term rental, whole house</u>	<u>No additional parking beyond the minimum requirement for single family dwelling.</u>
<u>Short-term rental, partial house</u>	<u>One additional parking space beyond the minimum requirement for single family dwelling.</u>

PART IV. That **Article XI, Schedule of District Regulations** be amended as follows:

(4) Non-Residential Prohibited and Permitted Uses Chart:

TYPE OF USE	ZONING DISTRICTS											OVERLAY DISTRICTS				COMMENTS
	R-1	R-2	R-3	CR	C-1	C-2	C-3	C-4	SP D-C	SP D-20	SE D-80	CO	Hotel	O&S	SRO	
Short-term rental	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	

PART V. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. This ordinance shall be in full force and effect from and after the ___ day of ____ 2019.

Benjamin Cahoon, Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

Date adopted: _____

Motion to adopt by Commissioner _____

Motion seconded by Commissioner _____

Vote: _____ AYES _____ NAYS

STAFF REPORT

TO: Planning Board
FROM: Holly White, Principal Planner
Andy Garman, Deputy Town Manager/Planning Director
DATE: February 19, 2019
SUBJECT: Draft Unified Development Ordinance (UDO) and Comments

A draft of the UDO was made available to the Technical Committee, Planning Board, and Board of Commissioners on December 18, 2018. The Technical Committee met on Monday, January 14th to discuss comments associated with the review of the draft UDO. On Tuesday, January 15th, a detailed presentation was made to the Planning Board. Additionally, the UDO was discussed at the board retreat in late January. The Technical Committee will meet again on Thursday, January 21st to discuss final suggested changes needed to draft UDO. A detailed list of comments along with staff responses are attached to this memo (Appendix A). This list represents comments made by the Technical Committee, Planning Board, and Board of Commissioners.

Initially, a Joint Workshop between the Planning Board and Board of Commissioners was suggested to review the document. However, since the UDO was discussed in detail at the board retreat, the Board has agreed to omit the joint meeting. Staff feels that based on the feedback received at the retreat, we have the necessary feedback from the Board of Commissioners to move forward in creation of a final draft. Staff can address most concerns and will consult with the Technical Committee to provide recommendations on alternatives for issues needing additional discussion for board consideration. The Planning Board and Board of Commissioners will continue to be updated throughout this process and will have the opportunity for input and further suggestions as revisions are made. By moving forward in this way, the UDO can be considered for adoption in May - a month earlier than anticipated if a joint workshop was needed. A revised schedule is included on the following page.

While the draft UDO has been distributed for an initial review, there is still work to be completed in order to develop a final version of the draft. Staff will continue to revise the document and/or respond to comments as feedback is received from the Technical Committee, Planning Board, and Board of Commissioners. Items that will be ongoing include:

- Diagrams/graphics/flow charts- additional diagrams, graphics, and flow charts are still needed in order to help visually explain the regulations.
- A complete editorial review process will need to be completed for cross referencing, grammar, and punctuation prior to the final draft.
- Development of the Town's Reference Manual for Development Permit Applications. This document is envisioned as a "How to Guide" for all types of permitting for applicants. Utilizing this type of reference document will centralize the process and submittal requirements for applicants and make it easier for staff to update and maintain these requirements.

Staff would encourage the Planning Board to continue to review the draft document and provide any suggestions in writing to staff. Further, we would be happy to meet individually with members of the Planning Board to review any concerns or comments.

Schedule for Completion

****Please note that the schedule starts with the end, adoption date first.*

Task	Date	Duration
Adoption	5/1	
Board of Commissioners	5/1	
Planning Board	4/16	
Community Meeting	4/9 or 4/11	
Final Draft Available	3/25	
Staff- make necessary changes to the UDO noted from comments. Staff will test ordinance with previously approved cases.	2/18-3/22	25 days
Send responses to comments on the UDO back to Technical Committee, Planning Board, and Board of Commissioners.	2/27	
Technical Committee meeting to review any final concerns that need feedback	2/21	
Distribute Technical Committee agenda and meeting prep materials. Prepare initial responses for all items staff was able to update. Agenda will outline items needing further discussion by the Technical Committee.	2/15	
Conduct editing review.	Ongoing	
Review by the attorney (necessary portions).	Ongoing	
Staff- work with staff to make necessary diagrams for UDO.	Ongoing	
Staff respond to all Technical Committee, Planning Board, and Board of Commissioner comments. Determine which concerns can be addressed and which need additional discussion.	1/28-2/12	8 days
BOC Retreat	1/24-1/25	

Attachment(s): Comments on the UDO with staff responses

Additional Issues for Discussion

Below is a list of items from Technical Committee Members, Planning Board, or the Board of Commissioners that still need additional discussion:

- Article 1
 - Penalties and Remedies 1.10.14 & 5-
 - Article 1.10.4 is written as though Article 1.10.5 doesn't exist and vice versa, though they both deal with penalties. These two Articles require some revision to eliminate apparent contradictions.
 - *Article 1.10.4 is geared toward general Penalties and Remedies. Article 1.10.5 will be specifically applied to the Sedimentation and Erosion Control Article of the UDO. Since this is a state model ordinance, staff has not yet vetted out any repetitive language. However, staff will review this prior to adoption of the UDO.*

- Article 3
 - 3.5.3. Action by the Planning Board. (Sec. 48-663)

Every proposed amendment, supplement, change, modification, or repeal to this UDO shall be referred to the Planning Board for its recommendation and report. The Board of Commissioners is not bound by the recommendations, if any, of the Planning Board. The Planning Board shall advise and comment on whether the proposed amendment is consistent with the Comprehensive Plan. The Planning Board shall provide a written recommendation, certified by the Planning Director, to the Board of Commissioners 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 Board of Commissioners.

 - Do we also need to state that they must state the findings of fact?
 - *Staff will verify with the attorney to ensure we are meeting state statues.*

- Article 4
 - Section 4.3 Sketch Plan Review Process-
 - Planning Board involvement in Sketch Plan
 - As I mentioned elsewhere, this process confuses me. I like the idea of sketch plan review. However, involving all of the Planning Board, I believe, will be problematic. Maybe we should consider having two members (hopefully volunteers) to be part of the "Sketch Plan Review Committee."
 - Use of the term "pre-application meeting" here renders this section confusing. Would call the meeting with the staff a pre-application meeting and this event something else.
 - Suggestion: Another way to handle the above comment is to name this event "combined preapplication meeting/sketch plan review." This would keep the terminology consistent from the title of Section 4.3 through the subparagraphs that follow.

- 4.5.3- Sketch Plan for Board of Commissioners Review-
 - As stated above its confusing to call a required and an optional event the same thing. Maybe could change this to a pre-application discussion or session to distinguish it.
- 4.22 Initial Conference; Preliminary Sketch-
 - Confusing on how this process differs from Section 4.3 above

For the items above:

- *Improved wording to between 4.3, 4.4, and Article 10 Commercial Design Standards.*
 - *New flow chart (i.e. decision model) for development process that ties Article 4.3, 4.4, and Art 10 Commercial Design*
-
- 4.23 Review Procedure for Minor Subdivisions-
 - Staff approval vs Planning Board approval for Minor and Preliminary Site plans
 - *Section 4.23 Review Procedure for Minor Subdivisions- add flow chart for subdivision review*
-
- Section 4.9 Purpose and Intent
 - Building and/or zoning permits are required for most site improvements including, but not limited to, the following:
 - Single-family/duplex construction – includes additions/expansions, enclosures, stairs, ramps.
 - Commercial development – includes additions/expansions, storage, renovations or changes of use.
 - Accessory structures – includes pool, storage buildings, gazebo, dune deck, tennis courts.
 - Driveways, parking and parking additions or reconfigurations.
 - Fences and pool barriers.
 - Signs.
 - Satellite dishes/minor communication towers.
 - Bulkheads, retaining walls, fountains, extensive landscaping.
 - Outdoor showers, HVAC, and pool equipment platforms.
 - Land disturbing activity.
 - Define or quantify extensive landscaping. Is this limited to residential or commercial as well?
 - Foundations- is this only large fountains?
 - *Staff will develop additional language to better specify the types of development needing building and/or zoning permits. Additional language to clarify may include:*
 - *Bulkheads and retaining walls*
 - *Improvements to buffer yards*
 - *Removal of trees greater than 6" in caliper*

- Land disturbing activities including but not limited to clearing, grading, grubbing of tree/shrub roots, etc.
- Article 6 Zoning Districts

Please note that the table for SPD-C is contained in Article 9 with the regulations for the SPD-C District.

The following uses need additional discussion:

- Prohibited Uses List-

Clarify what "other uses" means under prohibited uses list as a whole

 - Residential-
 - What is meant by Other Residential Uses?
 - *This was intended to be a catch all for any additional types of development that that were not listed in the table of permitted uses. Recent state legislation requires that municipalities create a prohibited uses list. It is difficult to think of every possible use the town would not want and "Other" was used as an attempt to protect the town. This would include residential uses not listed in the permitted uses table.*
 - Agricultural-
 - Commercial Crop Production (Indoor and Outdoor)
 - *Commercial Crop Production is a large-scale production of crops for sale, intended for widespread distribution to wholesalers or retail outlets.*
 - *Staff needs to do additional research to understand any concerns associated with indoor Commercial Crop Production.*
 - *Technical Committee to discuss at upcoming meeting.*
 - Institutional-
 - Accessory Church School- what does this mean?
 - *Staff would suggest removing this from the prohibited uses list.*
 - Automated Ice Vending Machines
 - *Staff would suggest adding a definition to clarify what this is. This would be similar to the one in Manteo which is a freestanding building on one lot dedicated solely to this use.*
 - Industrial-
 - Solar Energy Farms
 - *A solar farm is a term commonly used to describe a collection of photovoltaic solar panels. There is no official number of panels installed or acres of land used that*

qualify a project as a solar farm, though a peak output of one megawatt of power has been cited as a common standard. Due to the lack of a standardized definition for solar farms, most industry representatives and government agencies refer to solar farms as utility-scale solar applications. When this publication refers to solar farms, it means only those projects that can be categorized as utility-scale solar applications. The definition of a solar farm is not based on the number of panels or energy generated, but on the purpose of the energy. If the primary purpose of power from a solar application's is the sale for commercial gain, then it is considered a utility scale solar application.

- Solar Energy is allowed as an accessory use in all zoning districts. This would be a residential type application.
- Staff would suggest changing the title of "Solar Energy" in the Table of Permitted Uses to "Solar Energy Facility" to be consistent with Appendix A. Definitions.
 - Solar energy facility means a solar collector or other device or structural design feature of a structure that relies upon sunshine as an energy source and is capable of collecting, distributing, and storing (if appropriate to the technology) the sun's radiant energy for a beneficial use. (NEW)
- Technical Committee to discuss at upcoming meeting.
- Other warehouses/storage facilities- what does this mean?
 - This was intended to be a catch all for any additional types of development that that were not listed in the table of permitted uses. Recent state legislation requires that municipalities create a prohibited uses list. It is difficult to think of every possible use the town would not want and "Other" was used as an attempt to protect the town.
- Transportation-
 - Pedicab Storage and Dispatch
 - The use of a site for the staging, storage, and dispatch of non-motorized vehicles, including incidental parking and servicing of these vehicles.
 - Some localities reference these as a rickshaw.
 - Transit Stops
 - Staff would suggest clarifying the wording for this to "Private Transit Stops". Past planning efforts have included efforts to create a regional, public transit system.
- The following uses need additional discussion to determine which zoning districts are most appropriate for these uses:
 - Technical Committee to discuss at upcoming meeting
- Accessory Dwellings

- *The draft UDO proposes to allow accessory dwellings in R-3, CR, C-1, C-2, and C-4 and in accordance with the provisions of Section 7.3 Dwelling, Accessory. This item was discussed at the Board Retreat in January and was one of the principal concerns coming out of the meeting.*
- **Home Occupation- Class 1/2 not permitted in SPD-20**
 - *Staff would recommend consider permitting Class 1 in SPD-20. Currently Class 1 Home Occupation is allowed town wide.*
 - *Staff would recommend further discussion with the Technical Committee on Class 2.*
- **Townhouse- C-2**
 - *Staff would recommend allowing Townhouses in C-2 following standards for multi-family.*
- **Adult Care Home- permitted in R-2 and R-3**
 - Adult care home means an assisted living residence in which the housing management provides 24-hour scheduled and unscheduled personal care services to two or more residents, either directly or for scheduled needs, through formal written agreement with licensed home care or hospice agencies. Some licensed adult care homes provide supervision to persons with cognitive impairments whose decisions, if made independently, may jeopardize the safety or well-being of themselves or others and therefore require supervision. Medication in an adult care home may be administered by designated trained staff. Adult care homes that provide care to two to six unrelated residents are commonly called family care homes. Adult care homes include halfway houses and drug rehab facilities. (NEW)
 - Is this use appropriate for the R-2 and R-3?
 - *Staff would recommend maintaining as is.*
- **Boarding House- not permitted in SPD-20**
 - Boarding house means a single-family dwelling containing at least two rooms, which are intended to be rented or otherwise occupied by individuals outside of the permitted family members occupying the dwelling unit, where communal facilities (such as a kitchen) are available in such dwelling unit for use by the tenants. (Sec. 48-7)
 - *Staff would recommend maintaining as is.*
- **Family Care Homes/Halfway Homes- allowed in all but C-3 and SPD-C**
 - Family care home means a home with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment for not more than six resident persons with disabilities. "Person with disabilities" means a person with a temporary or permanent physical, emotional, or mental disability, including but not limited to mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments,

emotional disturbances and orthopedic impairments but not including mentally ill persons who are dangerous to others as defined in NCGS Section 122C-3(11)b. (NEW)

- Consider allowing in C-3 and SPD-C
 - *Staff would recommend not placing in the C-3 or SPD-C. This use would be inconsistent with the C-3 district as the purpose of the C-3 district is to provide for higher intensity land uses that are not compatible with other areas of the town. This would include utilities, light industrial, and commercial service buildings. SPD-C uses would require buy-in from the Village. Would not recommend altering without discussion from the Village.*
- Hotel
 - *The Board would like to leave the height limit for hotels in the Hotel Overlay District at 60 feet. Staff is also reviewing the setbacks for hotels in the overlay to ensure that they are not more restrictive than what is currently allowed while still providing a step-back provision for hotels over 35 feet tall. Staff will have a presentation on this at the upcoming meeting. Staff is also reviewing language that would remove the ocean access requirement while still protecting the historic district from hotel development.*
 - Art Gallery- Owner Occupied- consider in R-3 and C-3
 - Art gallery, owner occupied means a structure for the collection, display and/or distribution of objects of art and generally open to the public and operated by the art gallery owner residing at the structure and does not employ any person outside the immediate family. (Sec. 48-7)
 - *Staff would recommend not placing in the C-3. This use would be inconsistent with the C-3 district as the purpose of the C-3 district is to provide for higher intensity land uses that are not compatible with other areas of the town. This would include utilities, light industrial, and commercial service buildings.*
 - *Technical Committee can discuss the potential to include in the R-3.*
 - Auction House- consider in C-1, allowed in C-2
 - Auction house means a building and/or land used for the temporary storage and sale on premise of new and/or used goods by means of request or invitation for bids. (Sec. 48-7)
 - *Staff would suggest not expanding this use to the C-1 district as the use is more in keeping with the vision of the C-2 district. The C-1 district is envisioned to encompass Beach Road and accommodate neighborhood scale development that is pedestrian-oriented and meets the needs of near by communities.*
 - Beach Recreation Equipment Rental/Sales- consider in CR, permitted in the C-1 and C-2 districts.

- Beach recreation equipment rentals and sales means a business involved in the rental and sale of non-motorized beach equipment such as kayaks, bicycles, surfboards, boogie boards, canopies, chairs and umbrellas for off premise use. (Sec. 48-7)
 - *Staff would suggest adding this to the CR district.*
- Food Truck- consider in CR and/or C-4
 - Food truck means a licensed vehicle equipped with facilities for cooking and selling food which satisfies local and state regulations for health and sanitation standards. (NEW)
 - *Staff feels including in CR and C-4 is consistent with the Comprehensive Plan and would recommend adding to the CR and C-4 districts. Staff would also suggest modifying the definition of food truck to allow a tow behind vehicle.*
- Food/Grocery Store- consider in CR. Shown as permitted in C-1 & C-2.
 - *There is currently one food/grocery store in the CR.*
 - *The Comprehensive Plan states, "The oceanfront is an active environment subject to wind, waves, and the forces of erosion. Vulnerability to storm surge, erosion, sea level rise, and other hazards have influenced land use planning decisions and development patterns town wide and particularly along the oceanfront. This is discussed in greater detail in Section 3.3. Due to these factors, previous land use plans have designated the oceanfront for low-density development. This plan continues to recommend a low-density development pattern for the oceanfront for the aforementioned reasons. While land uses should be varied to accommodate tourist related needs (i.e. accommodations, restaurant, retail, fishing piers), future building sizes should be small scale and adaptable to future conditions and hazards. Large scale hotels and multi-family buildings with higher heights are incompatible with the desired scale and character of the oceanfront and are difficult to manage with respect to beach erosion. In the future, new oceanfront structures should generally be limited to 5,000 square feet of heated area and 35 feet in height (this could be higher to accommodate architectural requirements)."*
 - *Comprehensive Plan Policy LU-3 Recognize a low-density pattern of development for the oceanfront that is characterized by small scale, adaptable structures.*

While not probable that another food/grocery store would locate in the CR due to lot sizes, it would not be problematic if individual buildings are small scale with (size limited under 5,000 square feet) height limited to 35 feet, and residential appearance.

- Furniture Store- consider in C-1. Shown as permitted in C-2.
 - *Staff will need to provide a clear definition for furniture store. Perhaps we should define as furniture showroom. The parking standard is much less for furniture stores (1 per 500 sq. ft.) to accommodate the space for a showroom. Furniture showrooms are unlikely on beach road but small retail shops that sell furniture and home goods could be classified under retail.*
- Bank- consider in C-1
 - Already one existing
 - *Shown as permitted in the C-1.*
- Locksmith- consider in C-2 and C-4, permitted in C-3
 - *Today, many locksmiths are mobile. Staff would not envision heavy customer traffic for this type of use, but rather more of an office type space. The Technical Committee can decide if this type of use is in keeping with the vision for the C-2 and C-4 district.*
- Parking lot- consider in CR. Beach accesses are here. Why only in C-1 and C-2?
 - *Beach accesses are considered as another type of use. Would not suggest adding parking lots to CR.*
- Real Estate Rental Management Facility- consider in C-1 and C-4
 - Real estate rental management facility means a building containing those uses, including but not limited to, administrative offices and warehouse/storage areas for the convenience, maintenance, housekeeping and service of rental homes and properties. (Sec. 48-7)
 - *Staff would recommend not including in the C-1 or C-4 since this use is geared more toward a warehouse/storage area for maintenance or housekeeping of rental homes. Real estate management offices would be permitted as a professional office in the C-1, C-2, and C-4.*
- Ice Cream Shop- consider in C-4
 - *Ice cream shop would be consistent with vision of the C-4 district. The Technical Committee could include this use if desired.*
- Microbreweries- consider in C-4
 - *Microbreweries are consistent with the vision of the C-4 district. The Technical Committee could include this use if desired.*
- Microbreweries- amend definition to be consistent with General Statutes.
 - *These references are included in the supplemental standards for Microbreweries.*

- Mixed Use- consider allowing in C-4 and Hotel Overlay.
 - Comp plan encourages boutique shopping with residences above along the Soundside)
 - *Staff would agree that the Comprehensive Plan encourages mixed use in the C-4 and the Hotel Overlay. The Technical Committee could modify to include in the C-4 and Hotel Overlay if desired.*

- Community Gardens- permitted everywhere but seem unlikely in C-4.
 - Community garden means a use in which land is managed by a group of individuals to grow food or ornamental crops such as flowers, for donation or for use by those cultivating the land. Community Gardens may be divided into separate plots for cultivation by one or more individuals or may be farmed collectively by members of the group and may include common areas maintained and used by group members. (Amendment to Sec. 48-7)
 - C-4 Village Commercial District. The C-4 village commercial district is a district focused on arts and culture. This district is intended to provide a healthy mixture of residential and commercial uses where shopping, strolling, and dining are leisure activities as much as other needed services. Appropriate uses for this area include restaurant (walk-up/sit down), accessory dwellings, commercial (10,000 square feet or less) office, retail, personal service establishments, gallery/museums, equipment rentals, cottage courts, small scale (boutique) hotels, and residential. Commercial development should be designed to activate the street fronts, encourage walkability, and be situated closer to street grade while still elevated to minimize flood risk. It is also the intent of this C-4 district to encourage the development of unique, locally owned businesses that are designed to be reflective of the community's heritage and lifestyle both in scale and massing as well site layout. This could include the use of accessory residential dwelling units to commercial businesses or other arrangements of mixed use that are designed to be pedestrian oriented and near one another. The C-4 district is further intended to provide an area in which small but similar businesses will be allowed to take advantage of the steady flow of low-volume vehicular and pedestrian traffic by locating within close proximity of each other.
 - *While unlikely, there is no harm in allowing it to remain in the C-4. The Technical Committee can discuss and determine their desire for this use.*

- Environmental Awareness Areas- consider in C-4, permitted in SPD-20 and SED-80.
 - Environmental awareness area is an area designated and maintained for the purpose of conservation and environmental education. This may include nonprofit wildlife, ecological

threatened by shoreline erosion and being relocated on to a lot with another dwelling unit. Section 7.1 Cluster Housing outlines the supplemental standards that must be met to comply with this use.

- *Cottage courts, as applied in the UDO and our existing ordinance, is a type of residential development utilized as a type of accommodation. The supplemental standards that apply to Cottage Courts can be found in Section 7.2 Cottage Courts.*
- **7.3 Dwelling, Accessory**
 - *The draft UDO proposes to allow accessory dwellings in R-3, CR, C-1, C-2, and C-4 and in accordance with the provision of Section 7.3 Dwelling, Accessory. This item was discussed at the Board Retreat in January and was one of the principal concerns coming out of the meeting.*
- **7.4 Dwelling, Large Residential**
 - If two 16,000 SF lots were combined why couldn't the house be 10,000 SF?
 - 7.4.4. Dimensional Requirements.
 - 7.4.4.1. The minimum lot area for large residential dwellings shall be 16,000 square feet. The total enclosed habitable living space for large residential dwellings is 5,000 square feet, except where the large residential dwelling is located in the SED-80 zoning district on a lot which meets the minimum lot area requirements for that district
 - *Policy LU-13 encourages maintaining the overall regulatory scheme for residential and commercial zoning district as a means to avoid overall increases in development intensity or density. In addition, policies LU-1 and LU-3 are supportive of low-density patterns of development. Staff would recommend, at this point in the UDO process, remaining with the policy direction established by the Comprehensive Plan.*
- **Section 7.18 Car Washes (Automated and Self-Service Only).**
 - Car washes (automated and self-service only) are permitted in accordance with Section 6.6 Table of Uses and Activities, provided that the following additional requirements and conditions are met:
 - 7.18.1. An attendant shall visit and assess the site a minimum of two times daily during all hours of operation to ensure a clean, orderly operation.
 - This seems excessive. Most car washes are fully automated now.
 - 7.18.8. Car washes may have specified hours of operation as necessary to minimize the impacts on any adjacent residential uses.

- How would this apply to car washes that are automated 24/7?
- As recent as 2016, there was a proposal for a car wash and previously there was a long history of attempts to allow car washes in the town. There has historically been a great deal of concern about car washes and their impacts on adjacent to residential areas. Staff would suggest leaving the language as is.

A brief history of car washes in Nags Head is below. The draft UDO reflects all the recent changes noted by the planning board and board of commissioners related to the 2016 proposal. There is significant history of this use within the Town dating back to 1988 when the discussions first arose with the Planning Board.

-September 20, 1988 – Request presented to the Planning Board to include “Car Wash” as a Permitted or Conditional Use within the C-2 Zoning District. At this meeting the Planning Board felt there was a need to regulate the operation via Conditional Use approval with such conditions as limiting the hours of operation and requiring an attendant on-site.

-October 18, 1988 – Presentation to the Planning Board on the use of a car wash as a Conditional Use with specified conditions including that the car wash be enclosed and fully automated under the direct operation of an attendant and that the hours of operation be limited to 9:00am to 9:00pm. The applicant at this time expressed concern that the requirement the car wash be enclosed would eliminate the open bay/wand operation. The Planning Board felt this type of operation would promote noise, trash and congestion and continued with the recommendation of an enclosed building. The Planning Board recommended adoption of the ordinance with development standards as presented.

-December 20, 1988 – Planning Board tabled discussion as the applicant was present to discuss the proposal.

-January 17, 1989 – Planning staff presented the request once more to the Planning Board following the applicant's assertion that the original request, to allow a self-service type car wash operation as well as automated, was not decided upon by the Board of Commissioners. The Planning Director presented the proposed conditions including the request for self-service car washes. Planning staff recommended against this because of the increased potential that an unattended, self-regulating business may create problems related to noise and litter control. While the Planning Board felt that a car wash might likely be needed within the Town they did not feel that this was the type that was desired. The Planning Board forwarded the request to the Board of Commissioners for the final decision with their recommendation of denial.

-March 6, 1989 – The Board of Commissioners held the Public Hearing pertaining to “Car Wash” as a Conditional Use within the C-2, General Commercial Zoning District. Commissioners felt that the Planning Board’s concern of noise could be addressed by an on-site attendant however the concerns of litter and possible after-hours activities could not be addressed. The Board of Commissioners voted to deny the request as presented and directed staff to return with a version of the amendment incorporating the requirement for an on-site attendant as well as additional storm water measures.

-July 3, 1989 - The Board of Commissioners began the Public Hearing, following staff’s presentation on the revised ordinance, public comment was taken. Significant revisions were proposed requiring re-advertisement of the proposed amendment. The Public Hearing was set for the Boards August meeting.

-August 7, 1989 – The Board of Commissioners adopted the text amendment which incorporated the requirement that the car wash have an on-site attendant.

-September 6, 1989 – Parking standards for car washes was discussed and later adopted.

- June 21, 2016 Following requests made by the Planning Board at its May 17, 2016 meeting, numerous revisions have been made to the proposed ordinance to include:

- *A site attendant must visit the site a minimum of two times daily to ensure proper operation.*
- *Security cameras must be installed to record activity in vulnerable locations.*
- *Hours of operation have been established, this is what the Board of Commissioners recommended in the initial amendment from October 1988.*
- *A minimum setback of 50 ft. has been applied to any freestanding vacuums and other service areas adjacent to a residential use or district.*
- *Clarification on what the word “enclosed” represents and the need to comply with Town Architectural Design criteria.*
- *Clarification that the required buffer must be continual and opaque. The buffer requirement on this site would not be subject to the clustering and grouping of plantings afforded in other scenarios.*

- **Part VI. Commercial Mixed Use - Section 7.31 General Provisions**
 - **Is multi-family not allowed as part of mixed-use development?**
 - *Section 7.31 does not list multi-family as an acceptable use for mixed use development. Staff would recommend amending this part of the draft to add multi-family as an allowable use.*

- Section 7.37 Elementary School- permitted in the C-2 district
 - 7.37.7. No modular units shall be allowed on school sites.
 - While not currently needed, they have been used on most DCS sites during the past when growth is problematic and there are no funds available for new construction.
 - *Technical committee to discuss. Staff would suggest deleting this limitation.*

- Section 7.39 Nonprofit/Community Outreach Center with Aquatic Fitness Facility.
 - 7.39.4. Hours of operation shall be 8:00 am until 9:00 pm or sunset, whichever occurs first.
 - Why limit hours?
 - *Staff would suggest deleting this requirement as the YMCA already opens before 8 am.*

- Section 7.41 Police Shooting Range.
 - Consider adding hours of operation
 - *As there has been a great deal of community concern about the hours of operation in the past, staff would suggest amending to add hours of operation. However, it should be noted that there is a mandatory state requirement for law enforcement officials to certify, at least once a year, after dark if this range will see continued use for the law enforcement community.*

- Section 7.42 Private Clubs (Nonprofit).
 - This is listed as a separate use for 501(c)(3) organizations.

- Section 7.44 Religious Complexes.
 - 7.44.2. Accessory Uses in the SPD-20 District.
A child care center is allowed as an accessory use to a religious complex in the SPD-20 district, subject to the following conditions:
 - What about allowing education or early childhood education?
 - *Staff feels that this type of amendment to the language would not be problematic. The Technical Committee should discuss and determine if the language should be amended.*

- 7.52 Private Parks/Playgrounds
 - Should these supplemental regulations be expanded to include hours of operation, signage, etc.?
 - *No change needed. Covered by other portions of the ordinance.*

- Section 7.61 Watercraft Rental, Non-Powered/Powered.

- Non-powered and wind-driven boat rentals including: canoes, kayaks, sailboats, windsurfer boards, and other nonpowered and/or wind-driven watercraft, are permitted
 - Consider spelling out kite boards, paddle boards
 - *Staff recommends amending the language.*
- 7.61.3. Boat Rental Establishments.
 - Boat rental or PWC Rental?
 - *Boat rental establishment means a business involved in the rental of boats, jet skis, windsurfers, and other personal watercraft for use in the sound waters only. The term includes both powered and non-powered watercraft. The term shall not include amusement rides for use in manmade ponds or pools. (Sec. 48-7)*
 - *The existing language in the current ordinance has not been change and has been carried forward into the draft UDO. The regulations limit the number of personal watercraft rental units per site with a maximum of 7 authorized personal watercraft rental sites within the town.*
 - *Section 7.61.3 regulates Boat Rental Establishments-*
 - *7.61.3. Boat Rental Establishments. Each site shall be limited to a maximum of eight (8) authorized personal watercraft rental units per site with a maximum of seven (7) authorized personal watercraft rental sites within Town. No personal watercraft shall be located waterward of the nearest principal or accessory building other than authorized personal watercraft identified for rental use and two personal watercraft that may be available for control, supervision, or rescue purposes per site.*
- 7.64 Wireless Telecommunication Facilities
 - There are no supplemental standards- are standards needed?
 - *7.64 references to Article 10. No additional standards are needed.*
- Section 7.66 Artisan’s Workshop
 - 7.66.4. Finished pieces of art work may be displayed on the exterior but shall not be located in any required setback or parking area.
 - Restricting finished pieces of art from the required setbacks is more restrictive than the way we treat Ace Hardware. We should go all one way or the other.
 - *Staff suggests removing this wording and treating the same as other businesses.*

- Section 7.72 Heliport, Accessory to Hospital and Medical Offices.
 - 7.72.3. The heliport shall be ground-based only. No rooftop facility shall be permitted.
 - Why would we restrict a heliport from the roof of the hospital?
 - *The FFA and the hospital regulate the location of the heliport facility at the hospital. Staff suggests not modifying the language.*

- SECTION 7.73 ON-SITE RENTAL OF BEACH CHAIRS AND UMBRELLAS.
 - 7.73.5. Rentals shall be limited to hotel patrons.
 - Why limit to hotel patrons?
 - *Technical committee to discuss. This was a specific amendment request that was made through the BOC several years ago and was carried forward as is.*

- Section 7.74 Outdoor Stands, Accessory to Shopping Centers & Group Development.
 - 7.74.1. The principal sale of items at an outdoor stand shall be limited to either fresh produce, hot dogs, coffee, ice cream or Italian ice and fudge. The sale of any other items shall be incidental and limited to no more than ten percent of the display area or ten percent of sales.
 - The list of products for an outdoor stand could reasonably be expanded to include hot pretzels, fudge, nuts, etc. But do we need to be this restrictive?
 - Could we generally say food?
 - *There is a long history of debate with this use over what products can be sold from an outdoor stand. There has been a concern, like that of food trucks, that these temporary locations not take business away from established businesses. Due to the history and debate over this topic, the ordinance has been carried forward as is.*

- Section 8-
 - Section 8.4 Development Standards for Special Districts.
 - 8.4.1. Dimensional Requirements.
 - SPD-20 lots are not typically 20,000 square feet. Why create non-conformity within our UDO making lots unbuildable, not able to add additions or make necessary repairs? These neighborhoods were platted more than 35 years ago. Why create the non-conformity and create hardship?
 - *Staff will clarify with a foot note that minimum lot sizes are only applicable to newly created lots. The lot size and width minimums do not affect the ability to develop on existing lots. This is in the nonconforming lots section in Article 5 however staff will include this explanation in Article 8 as well.*

- *Parking requirements for each principal use shall be calculated separately based upon the standards applicable to each use.*
 - *Staff would suggest amending the language to:*
 - *For restaurant use one parking space per 55 square feet of customer service area and for all office and retail occupancies one space for each 300 square feet of gross floor area.*
- 10.22.6.15. Three-dimensional sculptured objects and pictorial devices attached to and extending more than twelve (12) inches beyond any wall or roof of a building in business use. Attached sculptured objects and pictorial devices extending twelve (12) inches or less from a building wall or building roof shall be classified as a business wall sign or roof sign and shall be subject to all regulatory requirements of this UDO pertaining to such signs.
 - Section 10.22. 6.15 Does this apply to only sculptured objects with a commercial message, or all sculptured objects?
 - *Staff will amend the sign regulations generally to clarify what constitutes a sign.*
- 10.22.6.9 All outdoor advertising signs or structures are prohibited.
 - Do the words "outdoor advertising" actually mean "billboards"? This is not a defined term.
 - *Staff will amend the sign regulations generally to clarify what constitutes a sign.*
- 10.23.1.4. Signs banners associated with a special events permit or other use on a designated public events site, are permitted within the designated event site but must be directed internally to the event and not toward the exterior of property or along the beach, sound or roadway. Such signs shall not be located adjacent to the US 158 right-of-way or abutting property lines.
 - The intent of the first two words "Signs banners..." is not clear.
 - *Staff suggests modifying the wording to, "Signs and banners..."*.
- 10.24 Signs Permitted in Commercial Districts and the Commercial/Residential District
 - Should we add C-1 to allowable areas
 - Add to C-1
 - *Should also review the entire draft UDO to determine C-1 is allowed where appropriate.*
- 10.24.2.5. Window signs shall be permitted to be placed only inside a commercial building and shall not exceed twenty (25) percent of the glass area of the pane upon which the sign is displayed. Window signs of exposed neon, argon, krypton or similar gas tube lighting shall be permissible,

provided that such signs shall not exceed twenty-five (25) percent of glass pane area, and shall not exceed singly, or in combination 0.15-square-foot per lineal foot of store frontage, not to exceed twenty (20) square feet of sign area for any one store.

- Concerned about enforcement of this language.
 - *Staff suggests keeping language as is.*
- Section 10.84 Site Plan Submittal Requirements
 - 10.84.1 Sketch Plan Review- Clarify how this tie to the language in Article 4.
 - *Refer to response above the applies to number 4, 5, and 6.*
- Article 11 Environmental Regulations
 - 11.22.2. Exclusions from Regulated Land-Disturbing Activity. Notwithstanding the general applicability of this Part to all land-disturbing activities, this Part shall not apply to the following types of land-disturbing activity:
 - 11.22.2.1. Activities, including the breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to man including, but not limited to:
 - Agriculture is already prohibited.
 - 11.22.2.2. Activities undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in "Forest Practice Guidelines Related to Water Quality", as adopted by the department. If land-disturbing activity undertaken on forest land for the production and harvesting of timber and timber products is not conducted in accordance with "Forest Practice Guidelines Related to Water Quality", the provisions of this Part shall apply to such activity and any related land-disturbing activity on the tract.
 - Section 11.2 2.2.2 If an owner designated their property as a forestland (even if small in size) could that negate our tree protections?
 - *These regulations are part of a state model ordinance for sedimentation and erosion control. This portion of the UDO was carried forward as is. These suggestions are noted and staff will update at a later date.*
- Appendix A- Definitions
 - *Technical committee to discuss. Staff suggests amending the following definitions:*
 - Expand SOB definition- include movie studios for the purpose of making pornographic movies.
 - Modify "Sign" definition so that the art masts are clearly never considered signs.
 - Modify definition of food truck to include use of concession trailer.