AGENDA
Town of Nags Head Planning Board
Nags Head Municipal Complex Board Room
Tuesday, February 18, 2020; 9:00 a.m.
- D R A F T -

A. Call To Order

B. Approval Of Agenda

C. Public Comment/Audience Response

D. Approval Of Minutes
January 21, 2020 Planning Board Meeting

E. Establishment Of Regular Meeting Dates For Calendar Year 2020

Documents:

2020 SUBMITTAL DATES.PDF

F. Action Items

1. Continued Consideration Of A Text Amendment
to the Unified Development Ordinance submitted by a property owner to expand the principal sale items from outdoor stands to include reservations and tickets for events/activities.

Documents:

MEMO WITH ATTACH TO PB RE OUTDOOR SALES AMENDMENT FOR TICKETS_2.13.2020.PDF

2. Consideration Of A Text Amendment
to the Unified Development Ordinance to correct identified typographical errors.

Documents:

UDO HOUSEKEEPING TEXT AMENDMENT- FEBRUARY 2020 PB.PDF

G. Report On Board Of Commissioners Actions
February 5, 2020 BOC Meeting

Documents:

FEB 5 2020 BOC ACTIONS.PDF

H. Town Updates - As Requested

I. Discussion Items

1. Continued Discussion Of Regulation Of Large Occupancy/Event Homes

   Documents:

   EVENT HOME PDF FOR PB.PDF

2. Discussion Of Legacy Establishments/Structures

   Documents:

   MEMO WITH ATTACH TO PB RE LEGACY ESTABLISHMENTS AND STRUCTURES_2142020.PDF

3. Discussion Of Residential Stormwater Regulations

   Documents:

   MEMO WITH ATTACH TO PB RE STORMWATER_2.14.2020.PDF

4. Discussion Of FY20-21 Planning & Land Use Work Plan

J. Planning Board Members' Agenda

K. Planning Board Chairman's Agenda

L. Adjournment

Town of Nags Head
Telephone: 252-441-7016
FAX: 252-441-4290

Planning and Development 2020 Submittal Dates					
	Tech. Review[1]	Planning Board	Board of Commissioners	Board of Adjustment[2]	
Submittal Date	Meeting Date	Meeting Date	Meeting Date	Meeting Date	Deadline
December 19, 2019	January 7, 2020	January 21, 2020	February 5, 2020	January 9, 2020	December 10, 2019
January 16, 2020	February 4, 2020	February 18, 2020	March 4, 2020	February 13, 2020	January 7, 2020
February 13, 2020	March 3, 2020	March 17, 2020	April 1, 2020	March 12, 2020	February 11, 2020
March 19, 2020	April 7, 2020	April 14, 2020	May 6, 2020	April 9, 2020	March 10, 2020
April 16, 2020	May 5, 2020	May 19, 2020	June 3, 2020	May 14, 2020	April 14, 2020
May 14, 2020	June 2, 2020	June 16, 2020	July 1, 2020	June 11, 2020	May 12, 2020
June 18, 2020	July 7, 2020	July 21, 2020	August 5, 2020	July 9, 2020	June 9, 2020
July 16, 2020	August 4, 2020	August 18, 2020	September 2, 2020	August 13, 2020	July 14, 2020
August 13, 2020	September 1, 2020	September 15, 2020	October 7, 2020	September 10, 2020	August 11, 2020
September 17, 2020	October 6, 2020	October 20, 2020	November 4, 2020	October 8, 2020	September 8, 2020
October 15, 2020	November 3, 2020	November 17, 2020	December 2, 2020	November 12, 2020	October 13, 2020
November 12, 2020	December 1, 2020	December 15, 2020	January 6, 2021	December 10, 2020	November 10, 2020
December 17, 2020	January 5, 2021	January 19, 2021	February 3, 2021	January 14, 2021	December 15, 2020
January 14, 2021	February 2, 2021	February 16, 2021	March 3, 2021	February 11, 2021	January 12, 2021

Board of Commissioner Submittal/Meeting Dates may be obtained from Carolyn Morris, Town Clerk at 252-441-5508.

***Planning Board Items are due by 1 PM on submittal date: site plan check-in takes about 15 minutes.**

***Digital version of submittal is required in addition to required paper copies.**

[1]Tentative dates - meetings subject to cancellation/change

[2] Meetings scheduled as necessary

MEMORANDUM
Town of Nags Head
Planning & Development Department

To: Planning Board

From: Michael Zehner, Director of Planning & Development

Kelly Wyatt, Deputy Director of Planning & Development

Date: February 13, 2020

Subject: Continued consideration of a text amendment to the Unified Development Ordinance submitted by a property owner to expand the principal sale items from outdoor stands to include reservations and tickets for events/activities.

OVERVIEW

As the Planning Board is aware, this proposed text amendment (the applicant for the amendment is Kate Creef, Assistant General Manager, on behalf of Outlets Nags Head) was discussed preliminarily at the Board's January 21, 2020 meeting. At that time, the proposal was to amend the UDO to allow "outdoor kiosks" for the sale of tickets and reservations for on-site and off-site recreational facilities. Mrs. Creef had explained to the Board that a vendor had approached the Outlets about the idea of having a kiosk located on the property to allow patrons to book charter fishing excursions, a concept which was believed would enhance the customers' shopping experience. Mrs. Creef indicated that there would be a preference to allow two outdoor stands (where the regulations only allow for one) and confirmed for the Board that the plan was to locate the kiosk in the terrace area.

Based on the discussion and feedback provided at the meeting, the applicant submitted an adoption ordinance for the proposed text amendment and markup of the relevant sections of the Unified Development Ordinance. Modifying the original proposal, the request is now seeking to amend Section 7.76.1 to expand the principal sale items allowed to be sold from outdoor stands to include "reservations or ticket sales," and to amend Section 7.76.2. to increase the number of outdoor stands allowed per site from one (1) to two (2).

BACKGROUND

The current version of the allowances and standards for *Outdoor Stands, Accessory to Shopping Center & Group Development* are the result of numerous changes over the course of the last ten (10) years; actions of note are as follows:

- The allowance of outdoor fresh produce stands as an accessory use to shopping centers was first established in mid-2009;
- In late-2009, an amendment was adopted to allow hotdog vending stands as an accessory use to shopping centers;
- In early-2010, an amendment was adopted to allow coffee vending stands as an accessory use to shopping centers;

- In mid-2010, recognizing that one of each of the aforementioned stands could be permitted at any given shopping center, an amendment was adopted to limit the number of accessory outdoor stands at any shopping center site to one (1); additionally, the various stand uses were consolidated under a single use (Outdoor Stands);
- In late-2010, the Ordinance was amended to allow Italian ice and fudge sales;
- In early-2013 ice cream was added as an allowed sale item; additionally, in 2013, a request to expand the allowable number of stands from one (1) to (2) was denied; and
- The provisions were last amended in 2014 when the allowed locations for outdoor stands were expanded to allow as accessory to Group Development (aka Office/Retail Group Development).

POLICY CONSIDERATIONS

There are no direct policies concerning outdoor stands. However, certainly economic development objectives and policies encouraging and supporting small businesses and the viability of existing commercial properties are applicable, and need to be balanced with objectives and policies focused on maintaining the Town's character.

Generally, Staff believes that the request to allow the sale of tickets and reservations is consistent with applicable policies; however, Staff would suggest that the standards be clarified to require that the sale and advertisement of items be confined to stands. With respect to the number of allowed stands on any particular site, Staff would support a maximum of two (2) stands, with no more than one (1) stand selling fresh produce, hot dogs, coffee, ice cream or Italian ice, and/or fudge.

STAFF RECOMMENDATION

Staff recommends that the amendment be adopted with modifications to the standards to require that the sale and advertisement of items be confined to stands and to allow a maximum of two (2) stands, with no more than one (1) stand selling fresh produce, hot dogs, coffee, ice cream or Italian ice, and/or fudge. Additionally, it is suggested that Sections 7.76.3 and 7.76.4. also be amended to provide for a maximum stand area and any time limitations, respectively, for the sale of tickets and reservations; a limitation of 150 square feet and a time limitation consistent with produce stands are likely sufficient. Finally, Staff would recommend that the definition of Outdoor Stand, as follows, be amended consistent with the amendment of Section 7.76.1.:

> *Outdoor stand means an approved area where the sale of produce, hot dogs, coffee, ice cream or Italian ice, and fudge occurs from a cart or structure.*

With regard to the Planning Board's review, Staff recommends consideration of the following UDO provisions:

> *3.5.3. Action by the Planning Board.*

> *3.5.3.1. Every proposed amendment, UDO text amendment or zoning map amendment, 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.*
>
> *3.5.3.2. Prior to the consideration by the Board of Commissioners of a proposed UDO text amendment or zoning map amendment, 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 UDO Administrator, 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.*
>
> *3.5.3.3. Members of the Planning Board shall not vote on recommendations regarding any UDO text amendment or zoning map amendment where the outcome of the mater being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.*

It may also be helpful to the Planning Board to review the following provisions regarding action by the Board of Commissioners:

> *3.5.4. Action by the Board of Commissioners.*
> *Action upon an UDO text amendment or zoning map amendment, including the scheduling of a public hearing, will be at the discretion of the Board of Commissioners.*
>
> > *3.5.4.1. Before an item is placed on the consent agenda to schedule a public hearing, the Planning Board's recommendation on each proposed amendment must be received by the Board of Commissioners. If no recommendation is received from the Planning Board within 30 days from the date when submitted to the Planning Board, the petitioner may take the proposal to the Board of Commissioners without a recommendation from the Planning Board. However, the Planning Board may request the Board of Commissioners to delay final action on the amendment until such time as the Planning Board can present its recommendations. No such limitations shall apply to applications or requests submitted by Town staff or any Town Board.*
> >
> > *3.5.4.2. After receiving a recommendation from the Planning Board on a proposed amendment, the Board of Commissioners may proceed to vote on the proposed ordinance, refer it to a committee for further*

study, or take any other action consistent with its usual rules of procedure.

3.5.4.3. The Board of Commissioners is not required to take final action on a proposed amendment within any specific period of time. Final action on an UDO text amendment or zoning map amendment submitted by third parties will be taken within a reasonable time. Final action taken within 90 days of the public hearing before the Board of Commissioners shall be presumptively reasonable.

3.5.4.4. No member of the Board of Commissioners shall vote on any zoning map amendment or UDO text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial and readily identifiable financial impact.

3.5.4.5. Prior to adopting or rejecting any UDO text and/or map amendment, the Board of Commissioners shall adopt one of the following statements which shall not be subject to judicial review.

3.5.4.5.1. A statement approving the amendment and describing its consistency with the adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest.

3.5.4.5.2. A statement rejecting the amendment and describing its inconsistency with the adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest.

3.5.4.5.3. A statement approving the amendment and containing at least all of the following:

3.5.4.5.3.1. A declaration that the approval is also deemed an amendment to the Comprehensive Plan. The Board of Commissioners shall not require any additional request or application for amendment to the Comprehensive Plan.

3.5.4.5.3.2. An explanation of the change in conditions the Board of Commissioners took into account in amending the UDO to meet the development needs of the community.

3.5.4.5.3.3. Why the action was reasonable and in the public interest.

> *3.5.4.6. In deciding whether to adopt a proposed amendment to this UDO, the central issue before the Board of Commissioners is whether the proposed amendment advances the public health, safety, or welfare. When considering proposed map amendments:*
>
> > *3.5.4.6.1. The Board of Commissioners shall consider the entire range of permitted uses in the requested classification.*

Attachments:

1. Zoning Amendment Application;
2. Proposed Ordinance; and
3. Markup of Section 7.76, Outdoor Stands, Accessory to Shopping Centers & Group Development

ZONING AMENDMENT APPLICATION
TOWN OF NAGS HEAD, NORTH CAROLINA

Applicant Kate Creef, Assistant General Manager, on behalf of Outlets Nags Head

Mailing address 7100 South Croatan Hwy Nags Head, NC 27959

Explanation of request

- [x] Zoning Ordinance - Section(s) _____
  Attach amendment in ordinance form.
- [ ] Zoning Map
  Attach copy of current Zoning Map with affected property outlined in red.
  Attach names and mailing addresses of the property owners of all parcels of land abutting the parcel in question.

Nature of request

Request to allow reservation kiosks for on-site and off-site recreational activities as permitted use within retail shopping centers.

Reason for request

To enhance property use and customer shopping experience.

Kate Creef, Assistant General Manager, on behalf of Outlets Nags Head
Applicant

12/10/19
Date

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF NAGS HEAD, NORTH CAROLINA PERTAINING TO THE REGULATION OF OUTDOOR STANDS, ACCESSORIES TO SHOPPING CENTERS & GROUP DEVELOPMENT

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160A-381, the Town of Nags Head (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 comprehensive zoning regulations and has codified the same within the Unified Development Ordinance, Part II of the Town Code, adopted pursuant to N.C.G.S. § 160A-363, which allows the Town to combine certain land development ordinances into a unified ordinance; and

WHEREAS, an owner of the property within the Town of nags Head proposed the amendment of the Unified Ordinance to alter regulations for outdoor stands, accessory to shopping centers and group development; and

WHEREAS, the Board of Commissioners 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, and is in the interest of and not contrary to the public's health, safety, morals and general welfare for the Town to amend the Town's Unified Development Ordinance as stated below.

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 ellipsis ("...") shall remain as they currently exist within the Town Code.

ARTICLE III. Amendment of the Unified Development Ordinance.

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

PART I. That **Section 7.76.1 and 7.76.2,** be amended as follows:

> 7.76.1 The principle sale of items at an outdoor stand shall be limited to either fresh produce, hot dogs, coffee, ice cream or Italian ice, ~~and~~ fudge, and reservations or ticket sales.

7.76.2 ~~Only one~~ Two outdoor stands shall be allowed per site. The stands shall not be required to be a permanent structure and may be located upon a trailer.

.

ARTICLE IV. Severability.

All Town ordinances or parts of ordinances in conflict with this ordinance amendment are hereby repealed. Should a court of competent jurisdiction declare this ordinance amendment or any part thereof to be invalid, such decision shall not affect the remaining provisions of this ordinance amendment nor the Unified Development Ordinance or Town Code of the Town of Nags Head, North Carolina which shall remain in full force and effect.

ARTICLE V. Effective Date.

This ordinance amendment shall be in full force and effect on the adopted effective date of the Unified Development Ordinance.

_____

Benjamin Cahoon, Mayor
Town of Nags Head

ATTEST: _____
Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:
Town Attorney
Date adopted: _____
Motion to adopt by Commissioner _____
Motion seconded by Commissioner _____
Vote: ____ AYES ____ NAYS

SECTION 7.76 OUTDOOR STANDS, ACCESSORY TO SHOPPING CENTERS & GROUP DEVELOPMENT.

Outdoor stands, accessory to shopping centers and group development, are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.76.1. 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 and reservations or ticket sales. 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.

7.76.2. ~~Only one~~ Two outdoor stands shall be allowed per site. The stands shall not be required to be a permanent structure and may be located upon a trailer. When located upon a trailer, skirting shall be installed around the perimeter to screen the wheels, axles and towing hitch from view.

7.76.3. The stand area, inclusive of display counters and awnings, shall not exceed four hundred (400) square feet for produce stands and shall not exceed one hundred fifty (150) square feet for hot dog, coffee, ice cream and Italian ice and fudge stands. Refrigeration units may be utilized within the stand area. The location of the stand on the site shall comply with minimum district yard regulations for principal use structures.

7.76.4. Produce stands shall be temporary and may be operated for a period of time not to exceed 180 days annually. The dates of operation shall be limited to between May 1 and November 1 each year. Hot dog, coffee, ice cream and Italian ice and fudge stands may be operated year round but shall not be left on the property overnight and must be removed daily.

7.76.5. All stands shall comply with applicable Dare County Health Department regulations and permitting requirements.

7.76.6. When located on a site with fifty (50) or more existing parking spaces, no additional parking spaces will be required. When located on a site with less than fifty (50) parking spaces a minimum of three (3) off-street parking spaces in accordance with parking regulations of this UDO shall be provided.

7.76.7. When the regulations contained in the subsection are in conflict with the general regulations of Town Code Section 12 Article III, Peddlers and Itinerant Merchants, the provisions of this UDO shall prevail.

MEMORANDUM
Town of Nags Head
Planning & Development Department

To: Planning Board

From: Holly B. White, Principal Planner
Michael Zehner, Director of Planning & Development
Kelly Wyatt, Deputy Director of Planning & Development

Date: February 13, 2020

Subject: Consideration of a text amendment to the Unified Development Ordinance to correct identified typographical errors.

OVERVIEW

Since the adoption of the Unified Development Ordinance (UDO) on August 7, 2019, staff has located minor typographical errors throughout the document. This amendment will address minor numbering, punctuation, grammar, and contextual issues. Additional similar amendments will be necessary to address any other outstanding issues in the future.

STAFF RECOMMENDATION

Staff recommends that the amendment be adopted with as outlined in the attached memorandum. Staff is available to answer any questions.

Attachment:

Memorandum- An Ordinance Amending the Code of Ordinances of the Town of Nags Head, North Carolina Pertaining to Correct Identified Typographical Errors.

MEMORANDUM

Town of Nags Head

Planning & Development Department

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF NAGS HEAD, NORTH CAROLINA PERTAINING TO CORRECT IDENTIFIED TYPOGRAPHICAL ERRORS

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160A-381, the Town of Nags Head (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 comprehensive zoning regulations and has codified the same within the Unified Development Ordinance, Part II of the Town Code, adopted pursuant to N.C.G.S. § 160A-363, which allows the Town to combine certain land development ordinances into a unified ordinance; and

WHEREAS, following adoption of the UDO Planning Staff has identified several typographical and unintended errors to be amended;

WHEREAS, the Town of Nags Head 2017 Comprehensive Plan includes goals and policies aimed at maintaining a well-run and efficient government that provides high quality and cost effective services through good governance in order to advance the Town's vision; and

WHEREAS, the Board of Commissioners 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, and is in the interest of and not contrary to the public's health, safety, morals and general welfare for the Town to amend the Towns Unified Development Ordinance as stated below.

ARTICLE II. Construction.

For purposes of this ordinance amendment, underlined words (<u>underline</u>) 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 Unified Development Ordinance.

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

PART I. That **Article 2, Administrative, Legislative, & Quasi-Judicial Authority, Section 2.4 Planning Board**, be amended as follows:

2.4.4. Powers and Duties.

2.4.4.1. It shall be the duty of the Planning Board to prepare plans and to coordinate the plans of the Town and those of others to bring about a coordinated and harmonious development of the area. The Planning Board is hereby designated as the planning agency for the preparation of a zoning plan for the Town under the authority of NCGS 160A-387. In addition, the Planning Board is empowered to:

2.4.4.1.1. Acquire and maintain in current form such basic information and materials as are necessary to understand past trends, present conditions and forces at work to cause changes in these conditions.

2.4.4.1.2. Prepare and, from time to time, amend and revise a comprehensive and coordinated plan for the physical development of the area. The Comprehensive Plan shall be the Planning Board's recommendations to the Board of Commissioners for the development of the Town including, among other things, the general location, character and extent of streets, bridges, parkways, playgrounds, parks and other public ways, grounds and open spaces; the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power and other purposes; the removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension of any of the foregoing ways, buildings, grounds, open spaces, property, utilities or terminals; and the most desirable pattern of land use within the area.

~~2.4.4.1.4.~~ 2.4.4.1.3. Prepare and recommend ordinances promoting orderly development of the Town as recommended by the Comprehensive Plan including the ordinances contained within the UDO. The Planning Board may initiate proposals for amendment of the UDO based upon its studies and Comprehensive Plan. In addition, the Planning Board shall review and make recommendations to the Board of Commissioners concerning all proposed amendments to the UDO and zoning map.

~~2.4.4.1.5.~~ 2.4.4.1.4. Determine whether specific proposed developments referred to it by governmental or private agencies in the area conform to the principles and requirements of the Comprehensive Plan for the area and to make recommendations concerning them.

~~2.4.4.1.6.~~ 2.4.4.1.5. Keep the Board of Commissioners and the public informed and advised as to these matters.

~~*2.4.4.1.7.*~~ *2.4.4.1.6.* Make any other recommendations which it sees fit for improving the development of the area.

~~*2.4.4.1.8.*~~ *2.4.4.1.7.* Perform any other duties which may lawfully be assigned to it.

PART II. That **Article 2 Administrative, Legislative, & Quasi-Judicial Authority, Section 2.6 Board of Commissioners** be amended as follows:

SECTION 2.6 BOARD OF COMMISSIONERS.

2.6.1. The Board of Commissioners has the authority to initiate, review, and decide applications for the following: UDO text amendments, zoning map amendments, and conditional use permits in accordance with Article 3, Legislative/Quasi-Judicial Procedures, as well as major site plans, major subdivision preliminary plats, and subdivision waivers in accordance with Article 4, Development Review Process.

2.6.2. The Board of Commissioners, in considering conditional use permit applications, acts in a quasi-judicial capacity and, accordingly, is required to observe the procedural requirements set forth in Section 3.13, Procedures for Quasi-Judicial Hearings.

~~*2.6.2.*~~ *2.6.3.* In considering proposed changes in the text of this UDO or in the zoning map, the Board of Commissioners acts in its legislative capacity and must proceed in accordance with the requirements of Section 3.5, UDO Text Amendments/Zoning Map Amendments.

~~*2.6.3.*~~ *2.6.4.* Unless otherwise specifically provided in this Article, in acting upon conditional use permit requests or in considering amendments to this Ordinance or the zoning map, the Board of Commissioners shall follow the regular voting and other requirements as set forth in other provisions of the Town ~~c~~Code, the Town ~~c~~Charter, Rules of Procedure, or general law as applicable.

~~*2.6.4.*~~ *2.6.5.* The Board of Commissioners, in considering the approval of a site-specific development plan (as defined in Section 3.6, Establishment of Vested Rights), shall follow the procedural requirements set forth in Section 3.8, Conditional Use Permits for the issuance of a conditional use permit.

~~*2.6.5.*~~ *2.6.6.* A failure to vote by a Board member who is physically present in the Commissioners chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an abstention, not an affirmative vote.

PART III. That **Article 3 Legislative/Quasi-Judicial Procedures, Section 3.13 Procedures for Quasi-Judicial Hearings**, be amended as follows:

3.13.3. Modification of Application at Hearing.

~~***3.13.2.1.***~~ ***3.13.3.1.*** In response to questions or comments made in sworn testimony at the hearing, the applicant may agree to modify the application, including the plans and specifications submitted.

~~***3.13.2.2.***~~ ***3.13.3.2.*** Unless such modifications are so substantial or extensive that the decision-making board cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the decision-making board may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the UDO Administrator.

PART IV. That **Article 4 Development Review Process, Part II. Development Review Process**, **Section 4.2 Purpose and Intent**, be amended as follows:

PART II. DEVELOPMENT REVIEW PROCESS~~.~~

SECTION 4.2 PURPOSE AND INTENT.

The formal development review process is designed for non-residential development (i.e., projects other than one- and two-family dwellings) applications that require review by the Planning Board and Board of Commissioners. The permitting process for one- and two-family dwellings is provided in Part III, Development Permitting ~~Process~~ Requirements.

PART V. That **Article 4 Development Review Process, Section 4.10 Permits Required**, be amended as follows:

SECTION 4.10 PERMITS REQUIRED.

4.10.1. No use of land shall be initiated or modified and no building or other structure shall be erected, moved, added to or structurally altered without having either a conditional use permit approved by the Board of Commissioners as provided for under Section 3.8, Conditional Use Permits, or the necessary permits identified in Section 4.11, Permit Types, approved and issued by the UDO Administrator.

4.10.2. Furthermore, no building permit shall be issued except in conformity with the provisions of this UDO, the state building code, and applicable federal, state and local regulations.

~~***4.10.4.***~~ ***4.10.3.*** A fee for conditional use permits, zoning permits and building permits is required, which shall be in accordance with a regularly adopted fee schedule of the Town.

PART VI. That **Article 4 Development Review Process, Section 4.13 Certificate of Compliance Required**, be amended as follows:

SECTION 4.13 CERTIFICATE OF COMPLIANCE REQUIRED.

4.13.1. No land shall be used or occupied, and no building hereafter structurally altered, erected, moved, be used or have its use changed, until a certificate of compliance shall have been issued by the UDO Administrator stating that the building and/or the proposed use thereof complies with the provisions of this UDO.

4.13.2. A certificate of compliance shall be applied for coincident with the application for a building permit and shall be issued within ten days after the erection or structural alterations of such building, or part, shall have been completed in conformity with the provisions of this UDO.

4.13.3. A record of all certificates shall be kept on file in the office of the building inspector, and copies shall be furnished on request to any person wishing to review such records.

~~4.13.5.~~ 4.13.4. In instances where a change of use or other development is proposed that triggers permits or approvals under this UDO, but no building permit is required, then only those UDO permits or approvals required to verify that the proposed use and requirements pertaining thereto comply with the provisions of this UDO.

~~4.13.6.~~ 4.13.5. Prior to issuance of a certificate of compliance for any new construction project or for any non-residential project which involves an increase in lot coverage, the UDO Administrator shall inspect the entire site to determine if the development complies with the Town approved site plan. The applicant shall also furnish the Town with a final, original, sealed and signed as-built survey of the entire site. In cases where the proposed building is within six inches of the height limit for the district in which it is located, the UDO Administrator may require a height certificate prepared by a licensed surveyor.

~~4.13.7.~~ 4.13.6. Prior to issuance of a certificate of compliance for any remodel, addition, or accessory structure, the UDO Administrator shall inspect the entire site to determine if the development complies with the Town approved site plan. If the UDO Administrator finds that the site or a structure on the site has deviated from the approved site plan, or in cases where the project is close to exceeding lot coverage, height, or directly adjacent to a setback, the UDO Administrator may require a final, original, sealed and signed as-built survey and/or height certificate.

PART VII. That **Article 6 Zoning Districts, Section 6.2 Zoning District**, **Special Districts** be amended as follows:

6.2.5.4. O&S Ocean and Sound Waters District. The Ocean and Sound Waters District encompasses the ocean and sound waters and is established to provide for the proper use of these waters, including islands that adjoin the Town, to ensure the continued scenic, conservation and recreational value that these waters provide to the Town, its residents, visitors and the surrounding area. Regulations in this district shall not prohibit or regulate commercial fishing and navigation. The Ocean and Sound Waters District shall encompass and be applied to the area defined as the extraterritorial zoning area as referenced in Town Code ~~Article~~ Section 2-1 Zoning; boundary extension; establishment; application.

PART VIII. That **Article 6. Zoning Districts, Section 6.6, Table of Uses and Activities**, be amended as follows:

		Residential Districts			**Commercial Districts**				
Use Category/Class	**Use Type**	**R-1**	**R-2**	**R-3**	**CR**	**C-1***	**C-2**	**C-3**	**C-4**
Residential	Dwelling, Large Residential	PS	PS	PS	PS		PS		
Residential	Dwelling, Multi-Family				~~CS~~	CS	CS		

PART IX. That **Article 7. Supplemental Regulations, Section 7.21 Massage and Bodywork Therapy**, be amended as follows:

SECTION 7.21 MASSAGE AND BODYWORK THERAPY.

Massage therapy centers, are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.21.1. General Requirements.
These requirements apply to massage therapists and massage and bodywork therapy business operators. No person permitted under this article shall allow or permit any person to massage or treat any person unless the person giving such massage or treatment has complied with all requirements of this article.

7.21.1.1. Permits required.

7.21.1.1.1. All massage and bodywork therapists and owner/operators of massage and bodywork therapy establishments shall possess and provide proof of a North Carolina license to practice massage and bodywork therapy in accordance with NCGS Chapter 90, Article 36 Massage and Bodywork Therapy Practice.

7.21.1.1.2. A zoning permit is required, in accordance with Article 4, Development Review Process of this UDO, for both the practice of massage and bodywork therapy and owner/operators of massage and bodywork therapy establishments.

~~***7.21.1.2.3.***~~ ***7.21.1.1.3.*** An annual Town of Nags Head Business Registration shall be completed by massage and bodywork therapists and/or owner/operators of massage and bodywork therapy establishments. At the time of registration, any fees associated with the registration shall be paid.

7.21.1.2. The following information shall be submitted and considered as part of the application for a permit from the Town:

7.21.1.2.1. The name of the business and location of the business.

7.21.1.2.2. List of North Carolina certified massage therapists and contact information for massage therapists working in massage therapy and bodywork establishments.

7.21.1.2.3. A certificate of insurance indicating that the applicant has professional liability insurance for the practice of massage therapy/bodywork.

7.21.1.2.4. A description of the services to be provided and any other business to be operated on the same premises or on adjoining premises owned or controlled by the applicant.

7.21.1.2.5. If an applicant is to work under the supervision of a licensed physician, applicant must show scope of services from the licensed physician.

7.21.1.2.6. Verification of criminal history through investigative report by the Nags Head Police Department. Submission of the following information is necessary to complete this investigative report:

7.21.1.2.6.1. A complete statement of all convictions of any person involved in the operation of the business for any felony, or prostitution or any violation of any law relative to prostitution;

7.21.1.2.6.2. A complete statement of any revocation, by any governmental unit, of any license to operate a massage business or to engage in the business or profession of massage by the applicant or any persons associated with or employed by the operation of the massage therapy business~~.~~;

7.21.1.2.6.3. A complete statement of any conviction for violation of any statute, law, ordinance or regulation of any government

concerning the operation of a massage business or the business or profession of massage by the applicant or anyone employed with the business.

7.2.1.1.2.7 The Town reserves the right to request submission of any additional information deemed necessary to process the permit application.

7.21.1.3. The applicant or any person having a legal or beneficial ownership interest in the applicant shall not, for the three-year period preceding the application, have a previously issued license revoked for engaging in the business or profession of massage.

7.21.1.4. The applicant or any person having any legal or beneficial ownership interest in the applicant, shall not in the last ten (10) years have been convicted of any crime involving sexual misconduct including but not limited to, NCGS 14-177 – 14-202.1 and NCGS 14-203 – 14-208, any federal statutes relating to prostitution, or of any violation of any law or ordinance of any governmental unit related to the business or profession of massage.

7.21.1.5. It shall be unlawful for any person, corporation, partnership, or association to employ any person under the age of eighteen (18) years in the operation of a massage business.

7.21.1.6. Hours of operation:

7.21.1.6.1. No person shall massage or treat any person, or engage in the business or profession of massage, before 8:00 a.m. or after 12:00 midnight, prevailing time.

7.21.1.6.2. No person shall admit customers or prospective customers, or remain open for business, or allow, permit or condone any massage or treatment of any person before 8:00 a.m. or after 12:00 midnight, prevailing time.

7.21.1.6.3. No person in charge of managing a massage business shall allow, permit or condone any massage or treatment of any person before 8:00 a.m. or after 12:00 midnight, prevailing time.

7.21.1.7. Posting of license:

7.21.1.7.1. Every massage therapist shall post a copy of their North Carolina license to operate in their work area or on their person.

7.21.1.7.2. Every person, corporation, partnership, or association licensed under this article hereof shall display their business registration and their North Carolina license to operate in a prominent place or on their person.

7.21.1.8. A permit issued pursuant to this article is void if the licensee moves or ceases operating a massage business.

7.21.2. Massage of Private Parts for Hire.

It shall be unlawful for any person to massage or to offer to massage the private parts of another for hire. The term "massage," as used in this section, means the manipulation of body muscle or tissue by rubbing, stroking, kneading or tapping, by hand or mechanical device. The term "private parts" means the penis, scrotum, mons veneris, vulva, or vaginal area. The provisions of this section shall not apply to licensed medical practitioners, osteopaths or chiropractors, or persons operating at their direction, in connection with the practice of medicine, chiropractic or osteopathy.

7.21.3. Revocation of Permit.

7.21.3.1. Violation of any part of this article shall be grounds for revocation of the permit.

7.21.3.2. A permit issued pursuant to this section shall be revoked by the UDO Administrator or designee upon the determination that:

7.21.3.2.1. The permit holder violates any building or fire prevention ordinances or any provision of this UDO.

7.21.3.2.2. The permit holder, or the legal or beneficial owner of any interest in the permit holder is convicted of any crime involving sexual misconduct including, but not limited to, NCGS 14-177 – 14-202.4, and NCGS 14-203 – 14-208 in the last ten years.

7.21.3.2.3. Any employee of the permit holder is convicted of any felony in connection with his employment, or is convicted of any crime involving sexual misconduct including, but not limited to, NCGS 14-177 – 14.202.4 and NCGS 14-203 – 14-208 or of this article.

PART X. That **Article 7. Supplemental Regulations, Section 7.30 Restaurant, Neighborhood**, be amended as follows:

SECTION 7.30 RESTAURANT, NEIGHBORHOOD.

Restaurant, neighborhood, is permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.30.1. To be classified as a neighborhood restaurant, the indoor customer service area shall be less than 1,000 square feet.

7.30.2. An on-site outdoor customer service area in an amount up to 50% of the indoor customer service area is also permitted.

7.30.3. A restaurant site may contain more than one principal restaurant building, or one principal restaurant building in combination with another principal drive-in restaurant, drive-through restaurant, or takeout restaurant building.

7.30.4. Uses qualifying as a restaurant shall meet the following criteria:

> ~~***7.30.2.1.***~~ ***7.30.4.1.*** A food preparation area that is at least twenty (20) percent of the gross building square footage of the principal building. The square footage of food preparation area located in an on-site accessory restaurant use building or a second on-site drive-in, drive-through, or takeout restaurant may be applied when calculating this minimum 20% requirement. But when calculated together (principal and accessory or second principal buildings), in no event shall the food preparation area of the principal building be permitted to be less than ten (10) percent of the principal building gross square footage; and~~,~~
>
> ~~***7.30.2.2.***~~ ***7.30.4.2.*** At least seventy-five (75) percent of all customer seats shall be designated for full-service, full-menu dining; and~~,~~
>
> ~~***7.30.2.3.***~~ ***7.30.4.3.*** No more than fifteen (15) percent of the total building square footage shall be devoted to accessory entertainment uses including but not limited, to dance floor, lounges, bars, stages, live performance, and disc jockey areas. Accessory entertainment uses referenced in this section shall be permitted in a restaurant establishment provided these uses are clearly subordinated in area, extent, hours of operation, and purpose to areas designated for food and/or beverage preparation, service, and consumption.

PART XI. That **Article 7. Supplemental Regulations, Section 7.33 Commercial with Accessory Residential (Attached or Detached),** be amended as follows:

SECTION 7.33 COMMERCIAL WITH ACCESSORY RESIDENTIAL (ATTACHED OR DETACHED).

Accessory residential units are single-family attached or detached units that may be allowed on the same property and in conjunction with a commercial use. These are distinctly different than accessory dwelling units, which are accessory uses designed to be subordinate to and located on the same property as a single-family dwelling. Commercial with Accessory Residential, is permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.33.1. Commercial uses may have up to two (2) accessory residential units that are attached or detached.

7.33.2. Accessory residential uses must be located above or to the rear of the primary commercial use and must meet the setbacks for the principal structure within the zoning district.

7.33.3. Individual accessory residential units may not exceed 1,500 square feet in area.

~~***7.33.4.*** Parking shall be provided for the accessory residential units using the same parking standard applicable to single-family dwellings.~~

PART XII. That **Article 7. Supplemental Regulations**, **Section 7.39 Fire Stations/Public Works Facilities**, be amended as follows:

SECTION 7.39 FIRE STATIONS/PUBLIC WORKS FACILITIES.

Fire stations and public works facilities are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.39.1. Fire Stations.
Fire stations are permitted in accordance with Section 6.6, Table of Use and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.39.1.1. No open storage is allowed.

~~***7.39.2.***~~ ***7.39.1.2.*** Lighting shall be prohibited except for minimum lighting that may be required for security purposes.

PART XIII. That **Article 7. Supplemental Regulations, Section 7.50 Fishing Piers,** be amended as follows:

SECTION 7.50 FISHING PIERS.

Fishing Piers are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.50.1. Fishing piers, which may include accessory restaurant or retail uses, are permitted in the R-2 and CR districts in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided the following conditions are met:

7.50.1.1. Parking lot lighting shall be prohibited except for minimum lighting which may be required for security purposes.

7.50.1.2. The maximum total height of the pier house structure shall be thirty-five (35) feet.

7.50.1.3. Lot coverage shall not exceed fifty (50) percent. Coverage may be increased to a maximum of sixty (60) percent if open-space paving blocks are used in place of surfaces such as concrete or asphalt. The use and installation of open-face paving blocks shall be in accordance with the requirements of Section 8.6.6.6., Special Requirements for the Use of Permeable Pavement.

7.50.1.4. Restaurants associated with a fishing pier shall not exceed 1,500 square feet of combined indoor and outdoor customer service area.

7.50.1.5. In the CR district only, if the pier house contains multiple accessory or principal uses, including but not limited to, retail sales, arcade, restaurant, wind turbines, educational and recreational programming, and indoor public assembly uses, with a parking requirement greater than one parking space per 200 square feet of gross floor area, the overall parking requirement may be reduced by fifteen (15) percent. In utilizing this provision, at no time shall the total number of parking spaces provided be less than 100.

~~7.50.1.5.~~ ***7.50.1.6.*** In the CR district only, the location and installation of wastewater treatment facilities and required repair areas to serve the principal use may be located off-site provided that all off-site properties are undeveloped and are zoned for commercial use. Off-site wastewater treatment facilities shall be exempt from the requirements of Section 7.47, Wastewater Treatment Plants (Accessory to Pier). Above ground structures of the treatment facility shall be deemed principal use structures and shall comply with the dimensional height and yard requirements of the zoning district in which they are located. When off-site wastewater treatment facilities are utilized in conjunction with a fishing pier, restaurants are not permitted as a principal or accessory use to the fishing pier.

~~7.50.1.6.~~ ***7.50.1.7.*** In the CR district only, up to fifty (50) percent of the required parking for the site may be located at an off-site location. Off-site parking must be located in the C-2 zoning district.

PART XIV. That **Article 7. Supplemental Regulations, Section 7.55 Municipal Parks,** be amended as follows:

SECTION 7.55 MUNICIPAL PARKS.

Municipal parks are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to the following limitations and conditions:

7.55.1. Municipal Parks in the R-2 Zoning District.

Municipal parks which may include, but not be limited to, tennis courts, multi-purpose recreation fields, concession areas, and picnic areas, are permitted in accordance with

Section 6.6, Table of Uses and Activities, subject to the other requirements of this UDO and provided the following conditions are met:

~~***7.55.1.***~~ ***7.55.1.1.*** All multi-purpose recreation fields or tennis courts shall be located no closer than one hundred (100) feet from the property line of any adjacent residential property within the R-2 district.

~~***7.55.2.***~~ ***7.55.1.2.*** All buildings or parking lots shall be located no closer than fifty (50) feet from the property line of any adjacent residential property within the R-2 district.

~~***7.55.3.***~~ ***7.55.1.3.*** All multi-purpose recreation fields, tennis courts, parking lots, or buildings shall be located no closer than thirty (30) feet from the adjacent residential property line of any property within the SED-80 district.

~~***7.55.4.***~~ ***7.55.1.4.*** A 50-foot wide buffer shall separate all multi-purpose recreation fields and tennis courts from the property line of any property within the R-2 district. This buffer shall be bermed or planted to a minimum height of five (5) feet and that will reach a height of ten (10) feet within five (5) years. There shall be a minimum of six (6) rows of plants in the buffer placed on 10-foot centers. Eighty (80) percent of all plants must be locally adaptive live evergreen species, or the equivalent of these standards that incorporate existing vegetation and topography or other landscape architecture designs that demonstrate compliance with these standards. Ornamental grass/herbaceous plants shall not be required to be included in this buffer.

~~***7.55.5.***~~ ***7.55.1.5.*** All buildings and parking areas shall be buffered from the property line of any property within the R-2 district utilizing a 10-foot wide Commercial Transitional Protective Yard as prescribed in Section 10.93, Landscaping, Buffering, and Vegetation Preservation.

~~***7.55.7.***~~ ***7.55.1.6.*** Light fixtures for multi-purpose recreation fields shall be turned off no later than 9:00 pm.

PART XV. That **Article 7. Supplemental Regulations, Section 7.58 Designated Public Events Site**, be amended as follows:

SECTION 7.58 DESIGNATED PUBLIC EVENTS SITE.

Designated public event sites are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to the following regulations:

7.58.1. A special events permit is required for events held at a designated public events site for events that expect more than 100 attendees. Applications, including a site and management plan for events, must be made to the Town Manager's office no less than

fourteen (14) days prior to the initiation of any event or temporary use to take place on the site in order for the Town to:

7.58.1.1. Evaluate requests for Town assistance and costs to be charged as associated with the event;

7.58.1.2. Determine and schedule what types of site inspections may be needed;

7.58.1.3. Evaluate parking, site access and traffic controls;

7.58.1.4. Evaluate crowd controls and flow, and site requirements for bathroom, water and other facilities that may be required to protect the health and welfare of the participants;

7.58.1.5. Confirm that NC Alcohol Law Enforcement (ALE) and Dare County Health Department requirements have been met;

7.58.1.6. To assign and charge any fees associated with use of Town personnel;

7.58.1.7. Schedule repeating events~~; and~~.

7.58.2. Events site and management plan shall include:

~~***7.58.8.1.***~~ ***7.58.2.1.*** Contact information and cell phone for the person in charge of the event.

~~***7.58.8.2.***~~ ***7.58.2.2.*** A brief description of the event with an estimated number of expected participants. Ticketed events should indicate the maximum number of tickets that will be sold.

~~***7.58.8.3.***~~ ***7.58.2.3.*** A site plan map showing:

~~***7.58.8.3.1.***~~ ***7.58.2.3.1.*** The location of all temporary structures, including tents, stages, concessions, bathroom facilities, or rides.

~~***7.58.8.3.2.***~~ ***7.58.2.3.2.*** A traffic and parking plan indicating site ingress/egress, traffic flow direction, designated parking areas, and the number of parking spaces. Ticketed events must have one space for every three tickets sold. If off-site parking is anticipated, plan must indicate where off-site parking will be located and document approval from those property owners.

~~***7.58.8.3.3.***~~ ***7.58.2.3.3.*** The amount, type, and location of temporary signage, subject to the provision of Article 10, Part III, Sign Regulations of this UDO, and the following:

~~***7.58.8.3.3.1.***~~ ***7.58.2.3.3.1.*** Directional signage less than twelve (12) square feet may be located at strategic locations to direct pedestrians and motorists.

~~***7.58.8.3.3.2.***~~ ***7.58.2.3.3.2.*** Temporary advertisement, sponsorship, or commercial signage shall be directed internally to the event itself and shall not be located adjacent to or addressing adjacent properties, the US 158 right-of-way or the beach or sound.

~~***7.58.8.3.3.3.***~~ ***7.58.2.3.3.3.*** Temporary signs shall be displayed only during the actual time period of the event and shall be promptly removed at the close of such event.

~~***7.58.8.3.4.***~~ ***7.58.2.3.4.*** Notes or attachments related to any additional documentation pertinent to the planned event, including but not limited to:

~~***7.58.8.3.4.1.***~~ ***7.58.2.3.4.1.*** Approvals required from other agencies (ALE, NCDHHS).

~~***7.58.8.3.4.2.***~~ ***7.58.2.3.4.2.*** Off-site parking arrangements.

~~***7.58.8.3.4.3.***~~ ***7.58.2.3.4.3.*** Proof of insurance related to the event.

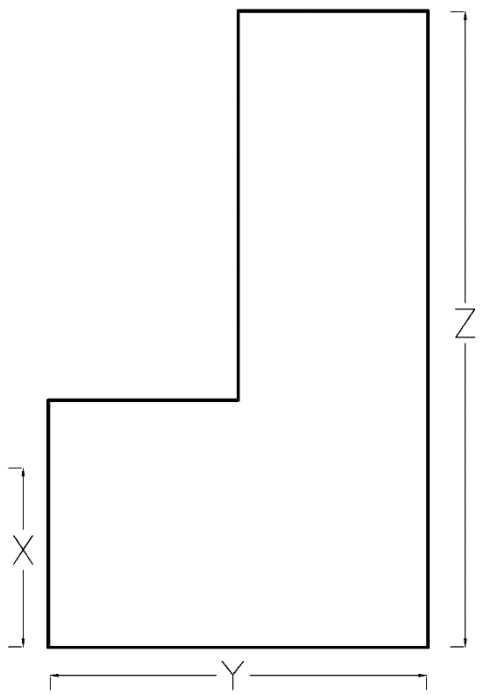
7.58.3. Failure to comply with inspection and code requirements can result in fines and/or suspension of the use of the site in accordance with Section 1.10, Violation of UDO Regulations, of this UDO and other applicable local and state regulations.

PART XVI. That **Article 8. District Development Standards, Section 8.6 Standards/Application of Dimensional Requirements**, be amended as follows:

8.6.2. Length and Width Requirements for Principal Buildings.

The following provision apply both to residential and commercial buildings, except that building erected in the C-3 commercial services district shall be exempt from these minimum dimensional requirements.

8.6.2.1. The length of a principal building shall not exceed three times the width of the building. The length shall be considered the longest dimension of the structure to include porches and open decks. The width shall be considered to be the widest consistent dimension through at least forty percent (40%) of the length of the building, which may be interrupted; for example, if a building has a width of twenty-two (22) feet for 20% of its length, reduces to a width of 18’ for 60% of its length, and then widens to a width of 20’ for 20% of its length, the building shall be determined to have a width of 20’ and shall have a length of no more than 60’.



Dimensions—Principal Buildings

(To use Y as the width, X must equal at least 40 percent of the length (Z) of the building.)

~~***8.6.2.3.***~~ ***8.6.2.2.*** The minimum width of the enclosed habitable space of a principal building shall be eighteen (18) feet measured at the first-floor level.

~~***8.6.2.4.***~~ ***8.6.2.3.*** A building shall be at least eighteen (18) feet wide along at least forty (40) percent of its length.

~~***8.6.2.5.***~~ ***8.6.2.4.*** Outside dimensions shall be used in determining length and width. This is defined as the exterior façade covering on the outside of the building (see graphic above).

8.6.3.6. Exclusions from Yard Requirements.

8.6.3.6.1. The inner edge of the front, rear, or side yard shall be measured from the building foundation and may exclude the outermost three feet of eaves, gutters, uncovered handicapped ramps, or uncovered steps. This exclusion may also apply to cargo lifts for single-family or duplex dwellings only, and built-in railing benches constructed in accordance with Appendix B, "Town of Nags Head Residential Design Guidelines".

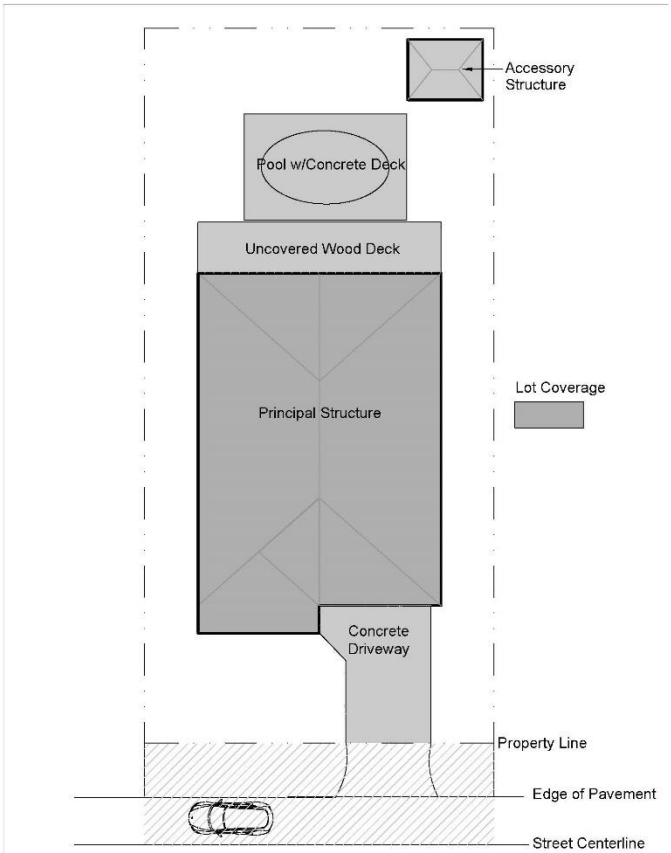
PART XVII. That **Article 8. District Development Standards, Section 8.6 Standards/Application of Dimensional Requirements**, be amended as follows:

8.6.6. Lot Coverage.

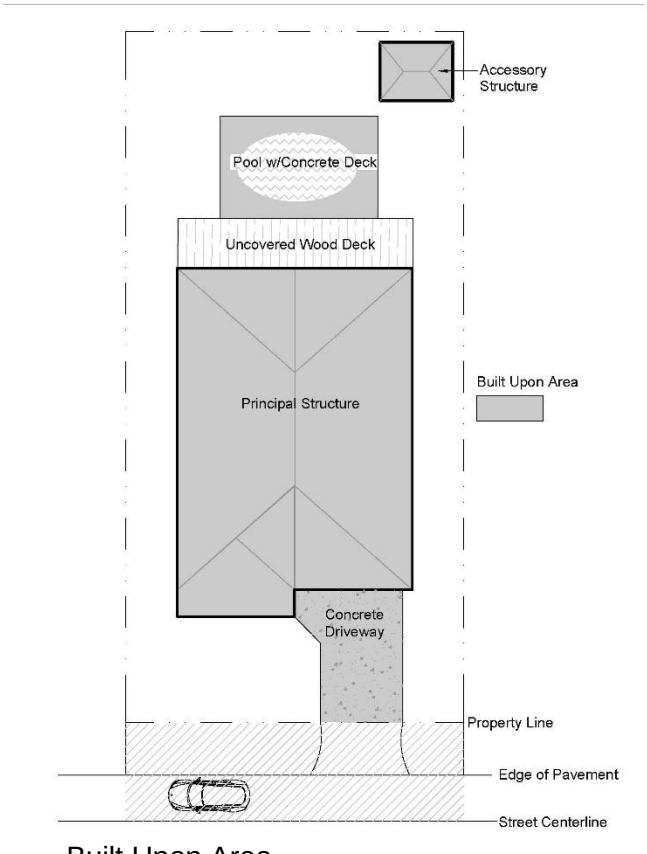
8.6.6.1. Purpose and Intent. As defined in Appendix A of this UDO, lot coverage means that portion of the lot area, expressed as a percentage, which is covered or

occupied by impervious surfaces or structures. Lot coverage is one of the primary mechanisms by which the Town regulates the development intensity of individual lots. Lot coverage limits are established for the purposes of preserving open space, limiting the amount of land disturbance necessary for development, and establishing development intensity limitations that are consistent with the Town's vision and goals for the built environment.

For the purposes of determining lot coverage, the following features shall be considered impervious – any principal or accessory use or structure located above the ground including decks, parking areas, vehicular use areas, roadways, access ways, and sidewalks or walkways that prevent the infiltration of rainwater. Lot coverage is utilized to determine zoning compliance and is distinct from the calculation of built-upon area. Built-upon area is used for the purposes of regulating stormwater management, and is described in Article 11, Part I, Buffering and Vegetation Preservation General Requirements of this UDO.



Lot Coverage



Built Upon Area

Although lot coverage is calculated based on the lot area as defined in Appendix A, in some cases portions of the lot area are excluded from the calculation. For example, for an oceanfront lot, lot coverage is calculated based on the lot area west

of the first line of stable natural vegetation or the static line, whichever is further landward of the ocean.

This section describes special provisions applicable to lot coverage calculations for certain uses/structures or districts. In some instances, certain building features or site elements are either excluded from the lot coverage calculation or count as a reduced percentage. Additionally, lot coverage may be increased with the application of additional stormwater management measures.

PART XVIII. That **Article 9., SPD-C Zoning Ordinance**, **Section 9.23 Institutional District**, be amended as follows:

9.23.5.3. Building Setback Requirements.

9.23.5.3.1. A minimum of forty (40) feet from the US 158 right-of-way.

9.23.5.3.2. A minimum of twenty (20) feet from the Seachase Drive right-of-way.

9.23.5.3.3. A minimum of fifty (50) feet from residential uses.

~~***9.23.5.2.4.***~~ ***9.23.5.3.4.*** ***Building-to-Building Separation.*** A minimum of twenty-five (25) feet.

~~***9.23.5.2.5.***~~ ***9.23.5.3.5.*** ***Building Height Limitation.*** Thirty-five (35) feet; however, for every foot above thirty-five (35) feet, there shall be an additional setback of two (2) feet from Seachase Drive, US 158, and any residential district. The maximum building height shall be forty-five (45) feet.

~~***9.23.5.2.6.***~~ ***9.23.5.3.6.*** ***Parking Required.*** Refer to Section 10.16, Required Parking by Use of this UDO.

PART XIX. That **Article 9., SPD-C Zoning Ordinance**, **Section 9.26 Attached Single Family District**, be amended as follows:

9.26.5. Single-Family Four (SF#4) District Standards.
Single-family four district standards in the attached single-family district are as follows:

9.26.5.1. Maximum Density. Twelve (12) dwellings per acre.

9.26.5.2. Minimum Building Front Yard and Side Yard Setback Requirements.

Fronting On:	Front Yard	Side Yard
Public right-of-way	15 feet	Minimum separation between buildings 10 feet

9.26.5.3. Minimum Rear Yard. Thirty (30) feet to existing residential outside the Village at Nags Head, plus a 25-foot natural or landscaped buffer. Only

a minimum 15-foot rear yard is required when adjacent to interior open space area.

~~***9.26.5.3.***~~ ***9.26.5.4.*** ***Minimum Lot Size.*** 2,400 square feet.

9.26.6. Single-Family Five (SF#5) District Standards.
Single-family five district standards in the attached single-family district are as follows:

9.26.6.1. Maximum Density. Three (3) dwellings per acre.

9.26.6.2. Minimum Building Front Yard and Side Yard Setback Requirements.

Fronting On:	Front Yard	Side Yard
Public right-of-way	15 feet	Minimum separation between buildings 10 feet

9.26.6.3. Minimum Rear Yard. Thirty (30) feet to existing residential outside the Village at Nags Head, plus a 25-foot natural or landscaped buffer. Only a minimum 15-foot rear yard is required when adjacent to interior open space area.

~~***9.26.6.3.***~~ ***9.26.6.4.*** ***Minimum Lot Size.*** 2,400 square feet.

PART XX. That **Article 9., SPD-C Zoning Ordinance**, **Section 9.27 Multifamily District**, be amended as follows:

9.27.6. Multifamily Two (MR#2) District Standards.
Multifamily two (MF #2) district standards in the multifamily district are as follows:

~~***9.27.5.1.***~~ ***9.27.6.1.*** ***Maximum Density.*** Eighteen (18) units per acre.

~~***9.27.5.2.***~~ ***9.27.6.2.*** ***Coverage.***

Maximum Building	Maximum Parking	Minimum Landscaped	Minimum Common Area
50 percent (low-rise)	N/A	20 percent	N/A

~~***9.27.5.3.***~~ ***9.27.6.3.*** ***Minimum Building Front Yard and Side Yard Setback Requirements.***

Fronting On:	Front Yard	Side Yard
Public right-of-way	10 feet	20 feet

Side yard setbacks for developments taller than two stories between South Virginia Dare Trail and the Atlantic Ocean shall follow the ~~"~~visual window~~"~~ concept as prescribed in subsection 9.24.11.

~~***9.27.5.4.***~~ ***9.27.6.4.*** ***Rear Yard.*** Twenty (20) feet. The rear yard may be reduced to fifteen (15) feet if adjacent to dedicated open space.

~~***9.27.5.5.***~~ ***9.27.6.5.*** ***Building Cluster Separation.*** There shall be a minimum ten (10) feet building separation for each twelve (12) feet of building height or portion thereof.

~~***9.27.5.6.***~~ ***9.27.6.6.*** ***Maximum Height.*** Forty-five (45) feet.

PART XXI. That **Article 10. Performance Standards, Section 10.24 Signs Permitted in Commercial Districts and the Commercial/Residential Distric**t, shall be amended as follows:

10.24.2.5. Window signs shall be permitted to be placed only inside a commercial building and shall not exceed twenty-five (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 permittable, 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.

PART XXII. That **Article 10., Performance Standards**, **Small Wireless Facilities**, be amended as follows:

SECTION 10.103 SMALL WIRELESS FACILITIES.

10.103.1. Standards.

Small wireless facilities and utility poles installed to support small wireless facilities shall comply with the following requirements:

10.103.1.1. Small wireless facilities shall be a permitted use in all rights-of-way and on properties containing uses other than single-family dwellings. Small wireless facilities shall be a conditional use on properties developed as single-family dwellings.

10.103.1.2. Height of New Small Wireless Facilities. New small wireless facilities in the ROW may not extend (i) more than ten feet (10') above an existing utility pole in place as of the effective date of this UDO; or (ii) for small wireless facilities on a new utility pole, more than ten feet (10') above the height permitted for a new utility pole under this UDO. A new small wireless facility on private property may not exceed the applicable height limit for the district in which it is located.

BOC ACTIONS
WEDNESDAY, FEBRUARY 5, 2020

1. Call to order - Mayor Cahoon called the meeting to order at 9:00 a.m.

2. Agenda – the Board approved the Feb 5th agenda as presented.

3. Recognition
Police Chief Phil Webster introduced Police Officer Terrance Flaugher who was welcomed by the Board to Town employment.

Public Works Director Ralph Barile introduced Facilities Maintenance Technician Nehmias Cortez who was welcomed by the Board to Town employment.

Finance Director Amy Miller introduced Dep Finance Officer Brooke Norris who was welcomed by the Board to Town employment.

Public Works Director Ralph Barile introduced Sanitation Supervisor Keefe White who was congratulated by the Board for 25 years of service to the Town.

Town Manager Cliff Ogburn introduced Town Clerk Carolyn F. Morris who was congratulated by the Board for 25 years of service to the Town.

4. Jennette's Pier - Executive Director Mike Remige presented the annual update on Jennette's Pier with a powerpoint presentation which was well received.

5. Public Comment
Susie Walters, Nags Head resident; spoke concerning recyclables which are now being incinerated; she encouraged the Board to allow for incineration of recyclables to continue while more information is gathered.

Al Friedman, Nags Head resident; he participates in Special Olympics events each year; the closest polar bear plunge is in Virginia Beach; he asked the Board to consider bringing this event to this area.

Cheri Pain, Nags Head resident; she has operated a homeowners association management business for 30 years in the Town; she very much appreciates the Town which is shaped by the hard work of the Board and many other individuals, she asked the Board to continue the Town's recycling program.

David Masters, Jr., Nags Head resident; he mentioned the possibility of the Board rescinding the roll-back trash carts ordinance and is aware there are a lot of issues with this subject; he urged the Board to take another look at this issue rather than striking the ordinance.

6. Consent Agenda – The Consent Agenda consisted of the following items:

Budget Adjustment #8 to FY 19/20 Budget
Consideration of Tax Adjustment Report

Request to advertise delinquent taxes
Approval of minutes
Resolution authorizing Town Mgr to execute DEQ grant contract for Islington Beach Access
Amendments to Consolidated Fee Schedule
Resolution updating Town officials with banking authority
Resolution clarifying Dare County Control Group / Town Oct 2015 Memorandum of Agreement
Ratification of actions from Board of Commissioners Jan 23-24, 2020 Retreat

The Board approved the Consent Agenda – with removal of agenda item #E-8 re: Resolution clarifying Dare County Control Group/Town Oct 2015 MOA - for consideration at the Feb 18th mid-month mtg.

7. Public Hearing – to consider a Vested Right Site Plan for the Outer Banks Hospital, 4923 & 4927 S. Croatan Highway, 4922, 4926 & 4928 Passage Way, submitted by Quible and Associates P.C. on behalf of Outer Banks Hospital; the application involves the demolition of the Urgent Care Facility and construction of 10,400 square foot addition to the existing Radiation Therapy building. Applicant is seeking a Conditional Use Permit to reduce the number of required parking spaces and modify certain parking requirements, and to rezone the properties at 4922, 4926 & 4928 Passage Way from SPD-C/SF-2 to SPD-C/Hotel District – The following motions were unanimously passed:

Motion #1 - To approve the request to rezone parcels located at 4922, 4926 and 4928 S. Passage Way from the SPD-C/SF-2 District to the SPD-C/Hotel District as presented.

Motion #2 – To approve the vested right site plan/application with the required four (4) findings of fact for conditional use permits.

Motion #3 – To approve the conditional use permit to reduce required parking and loading zone dimensions with five (5) findings of fact and three (3) recommended conditions.

8. Planning Director update – Several items were specifically addressed to include the Flood Prevention Ordinance – for discussion at the joint workshop with the Planning Board on Feb 18th; Planning Board request for feedback on regulation of large occupancy/event homes; and legacy options in the UDO for discussion at an upcoming Planning Board meeting.

9. Workforce Housing – the Mayor suggested that the Board take this report into consideration and come back with recommendations at a future meeting.

10. Lunch – The Board recessed for lunch at 11:55 a.m. and reconvened at 1 p.m.

11. Audit contract – the Board passed a motion to select Johnson, Mizelle, Straub & Murphy of Kitty Hawk as the Town's auditor.

12. Town Attorney Leidy – he congratulated Town Clerk Carolyn F. Morris on her 25th anniversary with the Town.

13. Town Manager – Beach Nourishment - *Proposed Municipal Service District (MSD)* – The Board passed a motion directing staff to prepare the MSD Report (includes map, statement, and plan) to include the north end of Town (to Kill Devil Hills Town line) for discussion at the Mar 4th Board meeting.

14. Town Manager – Sanitation/Recycling
- *Consideration of modification to contract with Bay Disposal dated Feb 5, 2019 re: curbside recycling* – The Board passed a motion to continue the contract with Bay Disposal authorizing them to divert the recyclable materials to be incinerated until the end of this fiscal year.

Consideration of changes to winter sanitation/recycling schedule - It was Board consensus to make no changes to the recycling schedule at this time.

Consideration of ordinance to rescind Town Code Sec. 30-6 (e) Storage and removal of trash and recycling carts - Town Manager Ogburn asked for additional time to evaluate/research the rescinding of the ordinance requiring the roll back of trash carts – for review at the Mar 4th Board meeting.

15. Comr. Renée Cahoon – Workforce Housing – she thanked staff for the work already done – she suggested to not expend any more money until additional details are known concerning how the money will be spent.

16. Comr. Brinkley – he thanked Susie Walters and Cheri Pain who spoke today expressing interest in maintaining the recycling program. Comr. Brinkley also thanked Al Friedman for speaking about the Special Olympics - Town Manager Ogburn said he would follow up.

17. Comr. Fuller – Staff was asked to follow-up on the issue mentioned during today's discussion on the Outer Banks Hospital facility site plan to make sure La Fogata Restaurant has adequate parking after renting 11 spaces to the Hospital.

18. Mayor Cahoon – CIP/Budget Workshops – the schedule was approved as follows:

CIP Workshop / Continuation if needed	Mar 25th - 9 am / Apr 8th – 9 am
Presentation of Manager's Recommended Budget	May 6th - 9 am
Budget Workshop / Continuation if needed	May 13th - 9 am / May 27th – 9 am
Public Hearing (PH)	Jun 3rd - 9 am
Budget Workshop (w/PH comments incorporated)	Jun 10th - 9 am
Adoption of Budget (mid-month meeting)	Jun 17th - 7 pm

Comr. Brinkley will not be available for the Mar 25th workshop; Comr. Renée Cahoon will not be available for the Apr 8th workshop. The Soundside Boardwalk item is to be included on a Board meeting agenda for discussion prior to being considered at the CIP Workshop.

19. Mayor Cahoon - Envisioning the future of Nags Head – Staff is to include this item under the Mayor's agenda as a standing item for each upcoming Board meeting.

20. Mayor Cahoon – He noted that the Urgent Care Facility that is to be demolished – from today's Outer Banks Hospital site plan discussion – was a bldg. he worked on as architect many years ago.

21. Mayor Cahoon – He shared that he would be out of town tomorrow and Friday (Feb 6-7). Mayor Pro Tem Siers will be available if needed.

22. Mayor Cahoon – He reported that next week (week of Feb 9-15) he may be in Puerto Rico assisting Emergency Management with hurricane damage inspection.

23. Adjournment - The Board recessed to a Joint Workshop with the Planning Board on Feb 18th at 9 am – The workshop will be followed by a Board mid-month mtg at 1 pm. The time was 2:11 p.m.

MEMORANDUM
Town of Nags Head
Planning & Development Department

To: Planning Board

From: Kelly Wyatt, Deputy Director of Planning & Development

Michael Zehner, Director of Planning & Development

Date: February 14, 2020

Subject: Discussion of Event Home Regulations

Following the Planning Board's January 21, 2020 discussion on large occupancy/event homes, Planning Staff provided the Board of Commissioners with a brief memo and update at their February 5, 2020 meeting requesting guidance on how to proceed. The Board of Commissioners noted that event homes had been a discussion at their most recent retreat and that public safety, noise, and off-site impacts, such as parking, were the primary concerns noted with regard to large events being held within single-family residential dwellings.

It was the consensus of the Board of Commissioners that the Planning Board and Staff continue to move forward with discussion on the regulation of such events. Additionally, the Board of Commissioners noted that large occupancy homes are a concern of many municipalities within Dare County and recommended that Staff work jointly with the other towns to consider how best to regulate occupancy. Specifically, regulations that the Town of Kill Devil Hills has discussed related to sprinkler protection, increased buffering, and vehicle stacking within the drive aisle were of interest. Staff would submit that these two items might best be handled separately, as the Board can currently proceed with developing regulations related to events; however, the consideration of additional restrictions on large occupancy homes requires additional time and coordination.

With regard to the regulation of events being held within single-family dwellings within the Town, staff would recommend consideration be given to developing criteria similar to that of the Town of Duck's "Wedding Event Registration Policy". You can review this information here: https://www.townofduck.com/getting-married-in-duck/ and a copy of the *Wedding Related Event Registration* is attached. In short, if a wedding-related event in the Town of Duck involves more than 50 people you are required to complete a registration form and return it to the Town within 30 days in advance of the event. The form is circulated to neighborhood associations, the property manager or owner of the proposed venue, and the Town of Duck Police and Fire Departments in order to ensure that they are aware of the event plans and also so that they contact can be made prior to or during the event should it be necessary. As part of the registration process, applicants are provided the Towns regulations for signage, noise and trash removal. Additionally, applicants must demonstrate that sufficient onsite parking is provided for the event. If unable to do so any need for the use of off-site parking must be accompanied by the proper permissions to utilize that parking facility.

Staff would recommend that consideration be given to requiring this registration when any proposed event is intended to attract 50 or more attendees at any single-family residential dwelling within the Town, not simply wedding-related events. Additionally, instead of adopting a policy, Staff would recommend that this be considered as amendment to the Town Code, likely within Chapter 4, *Amusements, Entertainments, Mass Gatherings and Commercial-Outdoor Recreational Uses*.

Planning staff will be available for additional discussion with the intention to bring forward a draft amendment to the Town Code for consideration at the Planning Board's March 17, 2020 meeting.

Town of Duck
Wedding-Related Event Registration Policy

The qualities that make Duck a great place to live and vacation also make it an attractive location for weddings and special events. Large, well-appointed rental homes can be an ideal venue for large parties. It is important to remember that these homes are located in residential neighborhoods and these events, if not properly managed, can disrupt the quality of life for neighbors and other members of the community. The Town of Duck's economy is tourism based, and it is the position of the Town to encourage and facilitate properly planned events that are cognizant of residents, businesses, and other visitors. For this reason, Duck is asking event planners to fill out the attached form which documents the measures that will be taken to reduce event related impacts such as noise, parking, signage, and trash removal.

If you are planning a wedding-related event in the Town which involves more than 50 people, please fill out the attached form and return it to the Town of Duck Town Hall 30 days in advance of the event. This form will be circulated to neighborhood associations, the property manager or owner of the proposed venue, and the Town of Duck Police and Fire Departments in order to ensure that they are aware of your event plans and also so that they can contact you prior to or during the event, should this be necessary.

The Town of Duck's regulations for signage, noise, and trash removal can be found on the Town's website at www.townofduck.com and are referenced on the registration form. Please note that these regulations remain in effect at all times and failure to comply with Town regulations could result in penalties or fines as well as the possibility of event disruption or termination. Also, please note that the Duck Police Department will be routinely monitoring conditions during the course of the event, specifically to preempt issues related to noise and parking.

For more information or questions regarding the Wedding-Related Event policy, please call the Department of Community Development at (252) 255-1234 or visit the Town's website at: www.townofduck.com/planningzoning.htm.

WEDDING-RELATED EVENT REGISTRATION

Registration submission required 30 days in advance of an event.
Submission Date:_____

PLEASE DO NOT LEAVE ANY BLANKS (Mark N/A as appropriate & use additional sheets if necessary).

A. Contact and Event Information:

Date(s) of Event #1:_____ Time(s) of Event:_____
Event #2:_____ _____
Event #3:_____ _____

(Events may include wedding ceremony, reception, rehearsal dinners, brunch, etc.)
Event(s) will be held on private property at the following location/address:

_____

Registrant Name (s):_____
Email (please print clearly):_____
Home Phone:_____ Cell Phone:_____
Address:_____
Name, cell phone & email of responsible party or wedding planner on-site & available on the day of the event: _____

_____

(Note that the responsible party should be someone who is readily accessible with this cell phone on his or her person during the event in case the Town should need to make contact regarding noise, trash, parking, or similar issues)

Number of participants expected:_____
Neighborhood Association Name/Contact/Phone:_____

_____

Property Management/Realty Firm Name/Contact/Phone:_____

_____

Rental Property Name and Rental House Number:_____; Or,
Property Owner Name/Address/Phone if property is not in a rental program:

_____

B. Parking/Traffic Flow:

Cars may not be parked on the side of the road in Duck. If you plan to use an off-site location for private parking, please demonstrate that you have sufficient permission to use this facility. Please describe your parking plan (i.e. use of shuttle buses, person to direct traffic, use of other parking facilities, etc.):_____

_____

_____

C. Sound/Noise:

Please note that Duck has a noise ordinance that is in effect at all times.
What kind of sound system/amplification/music will be used?
☐ DJ ☐ Band ☐ House Sound System ☐ Other (please describe):_____
What will be the hours of operation for the sound system?_____
Will the sound system be located outside of the building? ☐ Yes ☐ No

D. Trash Collection/Removal:

Trash Collection is curbside on Monday and Friday from May 1st to September 30th. The remainder of the year trash collection is on Mondays. Recycling is curbside on Mondays.

Please describe your plan to remove overflow trash from your event (i.e. obtain extra trash receptacles, to be handled by rental company etc.):_____

_____

E. Signage and Decorations

Signs, balloons, streamers and similar items are not permitted within the rights of way along NC12 and side streets. Please limit decorations (no more than three days duration) to the property where the event is being held and note that the property line is generally 15 feet or more back from the paved portion of the right of way.

Please describe what signage/decorations you are proposing to use for your event:

_____

With the signature below, the registrant indicates that (s)he has read and understands the Town of Duck Registration Policy for Wedding-Related Events and will comply with this Policy.

You are strongly urged to obtain approval from the appropriate homeowner association before your event(s). Failure to do so could result in legal action by the applicable homeowner association to enforce their covenants. Your signature on this application indicates that you understand that the Town of Duck does not enforce or consider the effect of neighborhood covenants when reviewing wedding related event registration applications.

_____ _____

Registrant Signature Date

The Town of Duck will distribute this information to:

Town Manager
Chief of Police
Fire Chief

Property Owner or Manager
Neighborhood Association
Property Owner or Manager of Off-Site Parking Facility (if applicable)

If you have any questions regarding event registration or this form, please contact the Director of Community Development via email at info@townofduck.com or by phone at 252-255-1234.

Please submit this form <u>at least thirty days</u> in advance of the event via email to the address above, via fax at 252-255-1236, or via mail to:

ATTN: Wedding Event Registration
Town of Duck
P.O. Box 8369
Duck, NC 27949

The Town will send an acknowledgement email or letter so that you know the registration form has been received.

Please Accept Our Best Wishes for a Beautiful and Safe Wedding Event!

MEMORANDUM
Town of Nags Head
Planning & Development Department

To: Planning Board

From: Michael Zehner, Director of Planning & Development

Kelly Wyatt, Deputy Director of Planning & Development

Date: February 14, 2020

Subject: Discussion of Legacy Establishments/Structures

OVERVIEW

As noted in my Director's Report memo to the Board of Commissioners and Planning Board, dated January 30, 2019, given recent expressed interest in the future of the Blue Heron Motel at 6811 S. Virginia Dare Trail and the limitations imposed by Town Code requirements on the evolution of the current hotel use of the property, Staff intends to begin considering Code amendments that advance Comprehensive Plan policies valuing the preservation of legacy business, establishments, and structures. Staff anticipates that discussion at the Planning Board's February 18, 2020 meeting will be an initial discussion of options.

POLICY CONSIDERATIONS

- One of the Town's principal goals, as established in the Comprehensive Plan, is to "Plan for orderly and sustainable growth and redevelopment," and an identified objective to attain this goal is the "Preservation and maintenance of legacy commercial businesses.

- As used in the Comprehensive Plan, at least within the context of *Character Areas*, legacy establishments, structures, or locations are those which "contribute to the overall sense of place or tell the story of Nags Head's past. These establishments, structures, or locations often remind you of the past and are nostalgic."

- Legacy establishments are particularly noted as adding to the character of the Whalebone Junction Character Area, and specifically the Whalebone Junction Core, where it is noted that "flexibility should be given to legacy type establishments for renovations as a way to retain the character of area while allowing the establishment to remain viable in the market."

- Legacy businesses are also referenced with respect to the Corridors Character Area, and specifically for the NC 12 and SR 1243 corridors, where it is noted that one of the future desires is to "provide flexibility for existing legacy businesses to renovate to help keep the character of Beach Road."

- The Land Use Element of the Comprehensive Plan, and the discussion of Incentives/Design Flexibility with respect to Site Development Characteristics, provides an an overview of the issue and general solution, as follows:

  > *The town has taken recent steps to preserve older legacy businesses and encourage the retention of these structures. There has been a regulatory shift with regards to nonconforming properties (properties which met zoning regulations at the time they were developed but are not consistent with regularity changes that have occurred). Essentially, non-conformity regulations have been modified to allow continued improvements to these older properties. The regulations are primarily designed to restrict additional development of unwanted land uses. The town's position is to allow continued use and improvement to nonconforming properties.*

- The section on Legacy Businesses under Local Business Development, as contained within the Economic Development and Tourism Element of the Comprehensive Plan, is attached. Specific policies and actions are as follows:

  > *EC-7 Recognize the role and importance of the look and feel of legacy development in creating the distinctive heritage, unique lifestyle, and family beach character that is central to the town's vision.*
  >
  > > *EC-7a: Develop more specific criteria for legacy businesses, based on research and data of existing legacy type buildings.*
  > >
  > > *EC-7b: Inventory, research, and map businesses that fit within the legacy business criteria.*
  > >
  > > *EC-7c: Develop incentives to encourage the preservation of commercial floor space.*
  > >
  > > *EC-7d: Explore ways to aid in the development of cottage courts.*

ISSUE AND OPTIONS

Generally, as referenced above, many legacy establishments and structures have been rendered nonconforming, either with respect to the use no longer being allowed in the zoning district in which the property is located or because of standards or requirements changing, or due to both circumstances. Nonconforming status is, by its nature, limiting; Staff would recommend that the Board review Article 5, *Nonconformities*, of the UDO https://www.nagsheadnc.gov/DocumentCenter/View/2771/Article-5_Nonconformities, and specifically Sections 5.3, *Nonconforming Structure with Conforming Use*, 5.4, *Nonconforming Site and Parking Areas*, 5.5, *Nonconforming Use of Land*, and 5.6, *Nonconforming Use of Structure*. It is helpful to consider that the general principle with respect to nonconformities is that, over time, the nonconforming uses or conditions cease, evolving to conforming uses or conditions. This effect would therefore seem to be inconsistent with the intent of the goals, objectives, policies, and actions contained in the Comprehensive Plan which support the retention of legacy establishments and structures and warrants consideration.

The conditions discussed above were the basis for the adoption of provisions in 2015 contained in Section 7.2.14 (attached) pertaining to nonconforming cottage courts. A similar approach could be taken with respect to legacy businesses and structures. Alternatively, an overlay zoning district approach could be taken, perhaps applied in a limited geographic manner and/or to properties meeting defined characteristics. Staff can expand on the pros and cons associated with these approaches at the Board's meeting.

Regardless of the approach, Staff does agree with the recommended actions of the Comprehensive Plan that it will be necessary to define and develop specific criteria as to what constitutes a legacy business or structure, and to then inventory and map properties that meet those definitions and criteria; however, Staff also believes that it is important to be proactive and take an iterative approach, developing a framework wherein applicable properties and uses can be added over time, as warranted.

STAFF RECOMMENDATION

At least for this initial discussion, Staff would suggest that it would be helpful for the Board to discuss perspectives with regard to what does and does not constitute a legacy business or structure, what are the defining characteristics, and what businesses or structures typify the term.

Attachments:

1. B. Legacy Businesses, of 3.4, *Economic Development and Tourism*, and 3.4.3, *Local Business Development*, of the Comprehensive Plan; and
2. Section 7.2.14, *Nonconforming Cottage Courts*

B. Legacy Businesses

Nags Head's vision statement places a great emphasis on the town's legacy. The vision emphasizes preserving and protecting the Nags Head character, tourism based economy, and sense of place; "We uphold our legacy by protecting and promoting our small town character that includes a sustainable local economy based on family vacation tourism, a high quality beach experience, and small, locally owned businesses."

During the community engagement portion of the plan, the Advisory Committee recognized that many of the small businesses contribute to the sense of place, quality of life, and high quality visitor experience within the town. The committee referenced these establishments as legacy businesses and described them as nostalgic or a reminder of the past. They conveyed the idea that life here was different, and helped to tell the story of Nags Head's past.

The Advisory Committee further identified that legacy businesses typically have the following characteristics:

- The architecture is varied but the overall size and scale of the building is small and blends within the surrounding neighborhood.
- The building is low scale often with only one or 1 ½ stories.
- Multiple small buildings may be located on the same property with a mix of residential and business uses. However, the Structures appear residential.
- The buildings are set in close proximity to the road.
- Parking is directly adjacent to the building or wraps the building.
- Restaurants often have walk up windows with outdoor seating.
- The area is highly walkable and businesses often have amenities such as outdoor seating and bike racks that cater to pedestrians and cyclists.
- Structures with legacy characteristics were typically constructed prior to 1980.
- Dining and retail establishments with legacy characteristics in Nags Head range on average between 3,000-5,000 square feet in size.

Further analysis and study should be completed to further define and preserve legacy businesses in the town. Additionally, this information can be used to encourage future development to construct similar to legacy type structures.

Since 2002, the town has seen a number of small, local businesses close, many along NC 12. These are being converted into residential development. The 2010 Land Use Plan recognizes this same concern but also points to businesses relocating to US 158 or going out of business due to large chain or "big box" stores. This is concerning since the Visitor's

Survey 2014-2015 indicates that 52.3% of respondents rank dining at restaurants unique to the area at 4th (out of 32) in the activities they participated in during their stay.

The town has made great strides and forward progress in the last two years working with local business owners to identify opportunities and constraints to their success and how the town can be a part of that. However, there are still policy questions related to retaining and maintaining legacy businesses in the long term that should be vetted. Preservation and upkeep of these legacy establishments is crucial in preserving the small town character that is central to the town's vision.

POLICIES & ACTIONS

EC-5 Direct new commercial growth into neighborhood commercial nodes, activity centers, or areas currently zoned for commercial development with emphasis on reuse of existing structures.

EC-6 Support and foster small, local businesses that preserve and uphold the vision and legacy of the town.

- EC-6a: Continue to work with the Local Business Committee to further identify and remedy regulatory barriers for opening and operating businesses.
- EC-6b: Develop and map an inventory of local businesses representing each sector of the town's economy.
- EC-6c: Develop regulatory flexibility that allows existing small, local businesses to upgrade and maintain their facilities in order to remain relevant and competitive in the market.
- EC-6d: Evaluate the impact of town processes, related to zoning and permitting, on businesses and streamline to meet the town's needs while supporting business investment.
- EC-6e: Expand the availability of town services available on-line to better meet the needs of the businesses community.
- EC-6f: Provide technical assistance through workshops, educational materials, or web based media to educate business owners on town processes and regulations related to owning and maintaining a business.
- EC-6g: Develop a branded wayfinding, safety, and information signage plan to identify types and locations of signage for pedestrians, cyclists, and vehicles. Install appropriate signage. Signage should enable visitors to locate existing town parks, sound and beach access points and trailheads.

POLICIES & ACTIONS

EC-7 Recognize the role and importance of the look and feel of legacy development in creating the distinctive heritage, unique lifestyle, and family beach character that is central to the town's vision.

- EC-7a: Develop more specific criteria for legacy businesses, based on research and data of existing legacy type buildings.
- EC-7b: Inventory, research, and map businesses that fit within the legacy business criteria.
- EC-7c: Develop incentives to encourage the preservation of commercial floor space.
- EC-7d: Explore ways to aid in the development of cottage courts.

EC-8 Enhance economic health and increase employment opportunities through business retention and expansion.

- EC-8a: Partner with the Outer Banks Chamber of Commerce to research and conduct discussions with local, small business owners in order to better understand factors contributing to the sale or loss of businesses.
- EC-8b: Coordinate with the Outer Banks Chamber of Commerce to offer education and training for local, small business owners on succession planning.

7.2.9. Off-Street Parking and Loading Facilities.

Individual units shall have a minimum of two (2) parking spaces. Parking spaces for each dwelling unit shall be provided so as not to interfere with the shared accessway or with the access of emergency or service vehicles to the entire property. Shared parking areas may be utilized to accommodate the total parking requirements for the development. Parking spaces and drive aisles shall not be located closer than five (5) feet to side or rear property lines. Parking spaces shall not be located with direct access from the right-of-way.

7.2.10. Refuse and Recycling.

Cottage courts shall provide a suitable location for a dumpster as determined by the UDO Administrator. Dumpster areas shall be appropriately screened and shall not be located in the required front yard of the property.

7.2.11. Pools.

Cottage courts may have one community pool serving all of the units on the property. Individual units may not have pools.

7.2.12. Utility Meters.

Utility meters of any type for individual units are prohibited.

7.2.13. Management.

Cottage courts shall operate under a single, unified management operation which arranges for reservations and attends to guest needs. There shall be a uniform key entry system operated by management staff.

7.2.14. Nonconforming Cottage Courts.

Cottage courts which do not conform to the definition of "cottage court", contained in Appendix A Definitions, and also to the provisions of this section may continue, subject to the following provisions:

> ***7.2.14.1.*** Existing individual dwelling units in a nonconforming cottage court may be replaced provided that replacement structures conform to the provisions of this section or do not increase the degree of structure or site nonconformity.
>
> ***7.2.14.2.*** All replacement, substantially improved, and substantially damaged cottage court units shall conform with the provisions of Article 11, Part III, Flood Damage Prevention.
>
> ***7.2.14.3.*** For the purpose of this section, structures will be considered individually when determining thresholds for repair, maintenance and destruction.
>
> ***7.2.14.4.*** No existing individual dwelling unit in a nonconforming cottage court shall be enlarged, extended, moved or structurally altered, except as provided below:
>
> > ***7.2.14.4.1.*** For lots abutting the Atlantic Ocean or Roanoke Sound, individual dwelling units in a cottage court may be moved in cases where such structures are determined to be in imminent danger of collapse, as defined by CAMA, as a result of erosion by wind or water, provided that such movement does not increase the degree of nonconformity of

the structures in any way. When utilizing this provision, a minimum ten-foot separation shall be maintained between individual structures. All structures when moved shall adhere to the minimum setback requirements prescribed in this section.

7.2.14.4.2. Minor modifications to a nonconforming cottage court dwelling unit or cottage court site may be approved administratively by the UDO Administrator or his/her designee. Minor modifications may include the addition of detached storage sheds, not to exceed 150 square feet in area, on-grade patios, decks, porches, driveway or parking modifications, or other additions not involving an increase or expansion of the habitable area of existing cottage court dwelling units.

7.2.14.4.3. Major modifications to a nonconforming cottage court dwelling unit or cottage court site, may be approved by the Nags Head Board of Commissioners through the conditional use process as set forth in Section 3.8, Conditional Use Permits. Major modifications include any proposal which will result in a net increase in habitable area of nonconforming cottage court units.

7.2.14.4.4. All improvements must meet the dimensional requirements of the district in which they are located. When a lot coverage nonconformity exists on a cottage court site, improvements may be allowed as long as there is no net increase in overall lot coverage. All other nonconformities shall be regulated in accordance with Article 5, Nonconformities.

7.2.14.5. On any individual dwelling unit in a nonconforming cottage court, work may be done on ordinary repairs, or on repair or replacement of nonloadbearing walls, fixtures, wiring or plumbing.

7.2.14.6. If an individual dwelling unit in a nonconforming cottage court becomes dangerous to life, destroyed or unlawful due to lack of repairs or maintenance, the building inspector shall condemn the structure in accordance with G.S. 160A-426, and the structure may thereafter be restored, repaired, rebuilt or replaced in conformity with the regulations of this UDO and any other applicable federal or state regulations.

7.2.14.7. Nothing in this UDO shall prevent the strengthening or restoring to a safe condition of any individual dwelling unit in a nonconforming cottage court or part thereof declared to be dangerous to life by any official charged with protecting the public safety, or upon order of such official when he has determined that there is a clear and immediate danger to the public safety.

MEMORANDUM
Town of Nags Head
Planning & Development Department

To: Planning Board

From: Michael Zehner, Director of Planning & Development
Kelly Wyatt, Deputy Director of Planning & Development
Kate Jones, Engineering Technician

Date: February 14, 2020

Subject: Discussion of Residential Stormwater Regulations

OVERVIEW

Given the continued importance and focus on stormwater, the Board of Commissioners asked the Director of Planning & Development to attend their retreat on January 23, 2020 to discuss the Town's residential stormwater regulations; these regulations can be found in Article 11, *Environmental Regulations* (https://www.nagsheadnc.gov/DocumentCenter/View/2777/Article-11_Environmental-Regulations) of the UDO, within Part I, *Stormwater, Fill, and Runoff Management*, Section 11.5, *General Standards for Residential or Duplex Development on Individual Lots*. A copy of the PowerPoint presentation (without referenced attachments) is attached. Following the Board of Commissioners' discussion, the Board directed Staff to present the Board's perspectives and the options identified by Staff (provided under CONSIDERATIONS) to the Planning Board for review and consideration of any recommended actions,

Essentially, the regulations and ordinance requirements are triggered by the following development activities:

- The construction of new detached single-family and duplex residential properties;
- The construction of more than 500 sq. ft. of new built-upon area on properties with existing single-family and duplex residential dwellings; and
- The removal and replacement of driveways; in instances where an existing driveway and parking area not meeting the standards of this section is being removed and replaced, the new driveway and/or parking area shall be designed so as to limit the discharge of stormwater into the right-of-way or onto adjacent properties.

When triggered, a stormwater management plan meeting the standards required by the ordinance must be submitted. In general, the standards of the ordinance require stormwater control measures (SCMs) to be provided, with storage volume equal to 15 cubic feet for every 100 square feet of built-upon area. For example, 1,000 square feet of built-upon area would require SCMs with 150 cubic feet of storage volume. The regulations do provide options to reduce the calculated built-upon area, incentivizing

preferred outcomes, and thereby reducing the necessary sizing (storage volume) of SCMs.

CONSIDERATIONS

During their discussion at the retreat, the Board of Commissions noted the following guiding principles for further review and consideration of the residential stormwater regulations:

- Can our rules acknowledge that there are different conditions – a system with flexibility?
- Retain form of landscape/minimize impact to landscape.
- Look for common sense solutions.
- Don't place unjust burden on property owner.
- Can we offer a "carrot" to go with a stick?
- Do we as a Board need to define flooding – separate between "Nuisance" and "Problem Stormwater" issues.
- Should not create additional problems.
- Should define problem we are trying to solve.

In their consideration and any recommendation to the Board of Commissioners, Staff would suggest that the Planning Board focus on whether the regulations and any potential changes address these perspectives and principles.

In their review, the Board of Commissioners also asked that the Planning Board consider the following options identified by Staff, to determine whether related actions may be necessary so that the regulations are more consistent with the aforementioned principles. The options presented by Staff to the Commissioners are in bold, Staff has expanded on each of these items for consideration and discussion by the Planning Board.

- **Improve education and availability of resources**
    - Education:
        - In the near term, publish social media and website news flashes related to the benefits of stormwater management at the lot level.
        - Publish a brochure, similar to materials for the Septic Health Initiative, can be mailed out to homeowners focusing on the benefits of stormwater management.
        - Engage with stakeholders and focused groups (Green Drinks, contractors, homeowners) on Town stormwater efforts, stormwater management, and Low-Impact Development (LID) techniques.
        - Coordinate with CSI, North Carolina Coastal Federation, and others to share resources and increase capacity.
    - LID Pilot Project: Look for opportunities on Town property to install pilot projects highlighting LID stormwater control measures; incorporate signage and coordinate public education opportunities.

- Availability of Resources:
    - Is there a way to cost share or subsidize costs of required improvements? This would require a budget allocation or grants.
    - There are existing grants that could be used, such as the Dare Soil and Water grant, which can provide $5,000 per homeowner, but there is a cap on total funding.
    - Could the stormwater ad valorem tax be expanded to include residential stormwater management funding?
    - Consider a water bill credit for installing LID stormwater measures such as cisterns and rain barrels.

- **Enhance ordinance incentives for preferred outcomes**
    - Expand available credits to reduce built upon area.
    - Do not cap tree and open space preservation credits to a maximum of 30% reduction of built upon area; provide the option to eliminate the need for stormwater management if you have enough open space and sizable trees to retain.
    - Provide a credit for reducing site disturbance, lot clearing, or filling.
    - Offer additional credit for not filling Army Corp of Engineers wetland areas.
    - Offer an incentive for the use of native plants in the SCMs.
    - Reduce the number of required SCMs (from 3 to 2) for a built upon area credit.

- **Provide an administrative option for engineering analysis to exempt or reduce requirements**
    - This may be an option, but conditions or standards allowing for exemption would need to be identified.
    - Consideration for water quality impacts, need to be considered, not just water quantity.

- **Provide more alternatives**
    - The regulations provide a variety of options and currently allow for the approval of alternative SCMs; we should continue to defer to the State for accepted SCMs, but continue to explore new technologies.

- **Provide for administrative waiver/variance**
    - Will require conditions and circumstances that warrant waiver to be identified. Would these be soil conditions, topography, lot size, amount of disturbance?
    - Who would make this decision and what information is required to be submitted?

- **Standardize dimensions and volume of BMP's**
    - Perhaps a standard set would relate to lot size, and the lot coverage allowed by zoning.
    - May result in more predictability, but less relation to actual impacts and existing conditions.
- **Create a points-type program for BMP's and/or preferred outcomes, similar to design guidelines**
    - Needs further thought, but could be designed such that points are received for various LID components. This would open up predevelopment LID concepts for points such as siting development in lower impact portions of the site, choosing greater setbacks and smaller building footprint, retaining natural hydrological features (i.e. wetlands).
    - SCMs with greater impacts would receive more points. The BUA would determine the amount of points needed; for example, SCMs with native plants would receive more points than infiltration trenches and French drains, large cisterns would receive more points than standard rain barrels, etc.
    - Signing a maintenance agreement could also generate points.
    - May be an *overcorrection*, significantly revising a regulatory program that has been in place for only 14 months.

STAFF RECOMMENDATION

Staff recommends that the Planning Board discuss the residential stormwater regulations, identifying their own perspectives regarding the intent of the regulations and whether the regulations achieve their intended purpose, align with the Commissioners' principles, and/or require adjustment.

Attachments:

1. PowerPoint - Town of Nags Head Residential Stormwater Ordinance Discussion, Board of Commissioners Retreat, January 23, 2020

Town of Nags Head Residential Stormwater Ordinance Discussion

Board of Commissioners Retreat

January 23, 2020

Residential Stormwater Ordinance - Background

- The regulation of stormwater on residential lots became a consideration in the Fall of 2012, the result of excessive rainfall and flooding that occurred over the preceding late-Spring and Summer months.
- On January 8, 2014, the BoC adopted an update to Chapter 34, *Stormwater, Fill and Runoff Management*, of the Town Code (*Attachment A*) which codified a stormwater plan requirement for single-family and duplex development triggered by fill and/or grading activities; adoption of this ordinance was preceded by the work of a stormwater subcommittee and coordination with the Planning Board and BoC (*Attachment B and Attachment C*)
- Between 2014 and the end of 2018, there was continued discussion and consideration of stormwater and the Residential Stormwater Ordinance; on December 5, 2018, the BoC adopted amendments to Chapter 34 (*Attachment D*) intended to simplify the requirements and plan approval process (*Attachment E*).
- Within 2019, Staff continued to work with representative of the Outer Banks Home Builders on fill requirements (*Attachment F*); Staff committed to proposing amendments to fill requirements in conjunction with adoption of an updated Flood Prevention Ordinance. Chapter 34 was codified as Part I of Article 11, Environmental Regulations, of the UDO (*Attachment G*); the complimentary Recommended Standard Details Manual may be accessed here: https://www.nagsheadnc.gov/938/Recommended-Standard-Details-Manual--Sto

Residential Stormwater Ordinance - Purpose & Intent; Policy Goals

- As provided in the UDO, the purpose and intent of the overall *Stormwater, Fill and Runoff Management* Ordinance is to proactively protect, maintain and enhance the public health, safety, environment and general welfare by establishing requirements and procedures to control the adverse effects of fill, land disturbance and increased post-development stormwater runoff for the purposes of both water quantity management for flood prevention and water quality protection with the goals to:
  - Control and minimize impacts associated with stormwater runoff from all development and redevelopment.
  - Mitigate current stormwater problems and prevent future problems associated with stormwater runoff.
  - Preserve water quality through proactive management practices.
  - Facilitate public understanding of stormwater management.
  - Encourage the use of pilings and open foundations and minimize the use of fill, consistent with FEMA's coastal construction recommendations.
  - Improve stormwater management through use of low impact development techniques.
  - Establish requirements for on-going management and maintenance of stormwater management practices.
  - Establish application and enforcement procedures that address land disturbance, sedimentation and erosion control, the use of fill, and stormwater management practices consistent with associated Town ordinances and state and federal laws and regulations, to include:
    - Soil erosion and sedimentation control provisions (Article 11, Part II);
    - Excavations (Chapter 18 of the Town Code of Ordinances);
    - Flood damage prevention provisions (Article 11, Part III);
    - NCDEQ stormwater management (NCAC T15: 02H .1000);
    - NCDEQ soil erosion and sedimentation control (G.S. 113A-50 - 113A-71);
    - NCDEQ and Dare County Health Department subsurface, ground-absorption wastewater effluent disposal (NCAC T15A: 18A. 1900).
  - Establish public awareness of potential surface and subsurface water drainage problems recognizing that development potential of some land may be limited.
  - Regulate development and redevelopment which may create additional stormwater related burdens to the Town or adjacent properties.
  - Cause every development and redevelopment employing stormwater management practices to develop a maintenance plan, and place responsibility for maintenance with the property owners.

Residential Stormwater Ordinance - Purpose & Intent; Policy Goals

- As established in the adoption ordinance for the 2018 Ordinance amendments, the basis for the adoption of the amendments were that:
  - the Town acknowledges that stormwater poses a threat to the public health, safety, and welfare;
  - the Town has experienced significant localized flooding during heavy and/or frequent rain events that in many cases can be attributed to stormwater and;
  - it is the Town's intent to preserve residential neighborhoods and to support local businesses;
  - the Town finds that the improper use of fill and lack of maintenance of stormwater management practices contributes to stormwater run-off;
  - the 2017 Comprehensive Plan states that the Town will "Ensure that stormwater runoff is properly managed to reduce nuisance flooding and pollution of sensitive environmental areas (p. 205)";
  - the Town finds that to protect coastal waters we should limit non-point source pollution attributed to run-off from impervious surfaces such as parking lots and roof tops;
  - the Town finds that as more lots are developed and the built upon area is increased throughout Nags Head, stormwater collection and conveyance systems within the public rights-of-way are being overburdened and must be supplemented with additional management practices on private property;
  - the Town manages resources to protect the public infrastructure, quality of life, environment, and property of the citizens of Nags Head through fair and equitable, cost effective means, and the Stormwater Ordinance seeks to improve, enhance, and protect the quality of life for the citizens of Nags Head;

Residential Stormwater Ordinance - Purpose & Intent; Policy Goals

- The Town's Comprehensive Plan includes the following policies and actions related to stormwater:
  - LU-14b: [Review] Existing lot coverage incentives for providing engineered stormwater management.
  - MS-15: Ensure that stormwater runoff is properly managed to reduce nuisance flooding and pollution of sensitive environmental areas.
  - MS-17b: Seek additional funding opportunities from local, state and federal agencies to assist with future stormwater planning and construction efforts.
  - MS-18: Educate and involve the public in stormwater management.

Residential Stormwater Ordinance - Continued and Additional Considerations

- As noted on Slide 2, since adoption of the amendments in Dec. 2018, Staff continued to work with representative of the Outer Banks Home Builders on fill requirements; Staff committed to proposing amendments to fill requirements in conjunction with adoption of an updated Flood Prevention Ordinance. As noted in *Attachment G*, there was not consensus on all issues between Staff and the Home Builders; Staff did receive feedback from the BoC at their September 2019 Retreat that will inform the forthcoming draft amendments associated with fill and the Flood Prevention Ordinance.
- Since January 2019, there have been 25 stormwater plans submitted for residential projects (6 for pool projects); of those, 3 were prepared by a licensed engineer, compared with 8 of 8 projects active at that time under the previous iteration of the ordinance having been prepared by a licensed engineer (3 of those 8 were subsequently redesigned under the new ordinance).

Residential Stormwater Ordinance - Continued and Additional Considerations

- Options to consider:
  - Repeal the residential stormwater requirements;
  - Improve education and availability of resources;
  - Enhance ordinance incentives for preferred outcomes;
  - Provide an administrative option for engineering analysis to exempt or reduce requirements;
  - Provide more alternatives;
  - Provide for administrative waiver/variance;
  - Standardize dimensions and volume of BMP's;
  - Create a points-type program for BMP's and/or preferred outcomes, similar to design guidelines;
  - Other options?