AGENDA
Town of Nags Head Planning Board
Nags Head Municipal Complex Board Room
Tuesday, March 17, 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
February 18, 2020 Planning Board Meeting

Documents:

FEBRUARY 18 2020 DRAFT MINUTES.PDF

E. Action Items

1. Consideration Of A Text Amendment
to the Unified Development Ordinance submitted by Megan Dixon and Kim Cowen to add the use "Learning Center" as a permitted use within the C-2, General Commercial Zoning District.

Documents:

TUTORING_LEARNING CENTER TEXT AMEND PDF.PDF

2. Consideration Of Numerous Text Amendments
to the Unified Development Ordinance as it pertains to the updated flood maps and update of the flood damage prevention Ordinance.

F. Report On Board Of Commissioners Actions
March 4, 2020 BOC Meeting

Documents:

MAR 4 2020 BOC ACTIONS.PDF

G. Town Updates - As Requested

H. Discussion Items

1. Continued Discussion Of Regulation Of Events Within Residential Dwelling Units

2. Continued Discussion Of Large Occupancy Homes

Documents:

LARGE RESIDENTIAL OCCUPANCY PDF.PDF

3. Continued Discussion Of Legacy Establishments/Structures

Documents:

MEMO WITH ATTACH TO PB RE LEGACY ESTABLISHMENTS AND STRUCTURES_3.13.2020.PDF

4. Continued Discussion Of Residential Stormwater Regulations

Documents:

MEMO WITH ATTACH TO PB RE STORMWATER_3.13.2020.PDF

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

I. Planning Board Members' Agenda

J. Planning Board Chairman's Agenda

K. Adjournment

Town of Nags Head
Planning Board
February 18, 2020

The Planning Board of the Town of Nags Head met in regular session on Tuesday, February 18, 2020 in the Board Room at the Nags Head Municipal Complex.

Planning Board Chair Megan Vaughan called the meeting to order at 9:00 a.m. as a quorum was present.

Members Present

Megan Vaughan, Molly Harrison, Meade Gwinn, Megan Lambert, Gary Ferguson, David Elder

Members Absent

Kristi Wright

Others Present

Cliff Ogburn, Andy Garman, Michael Zehner, Kelly Wyatt, Holly White, Cory Tate, Lily Nieberding, Margaux Kerr, David Ryan

Approval of Agenda

There being no changes to the agenda, Meade Gwinn moved that it be approved as submitted. David Elder seconded the motion and it passed by unanimous vote

Joint Discussion with Board of Commissioners to review Draft Flood Damage Prevention Ordinance Amendments

Chair Vaughan called for a motion to enter into a joint meeting with the Board of Commissioners to review and discuss the draft flood damage prevention ordinance amendments. Molly Harrison so moved, Gary Ferguson seconded, and the motion passed by unanimous vote.

Planning Director Michael Zehner introduced the item to the Boards.

The main objective for discussion at this joint meeting would be to review and discuss the draft Flood Damage Prevention Ordinance, along with updated building height measurement and fill provisions, to be considered in concert with the updated F.I.R.M. covering the Town.

Mr. Zehner noted that the current flood maps were adopted in 2006, the new Flood Maps must be adopted before June 19, 2020. For the Town to remain in the National Flood Insurance Program (which offers federally backed flood insurance to homeowners and disaster assistance to the Town) the Town must adopt the Preliminary Flood Maps.

In order to stay on schedule, it will be important that staff incorporate in any needed changes into the draft and bring back the draft Ordinance for consideration at the March 10th Planning Board Meeting.

Mr. Zehner explained that most of the ordinance is based on the model which the Town does not have a lot of discretion; but there are sections that provide for local preferences, more stringent than the model. Mr. Zehner noted that in addition, there are other things that are options that Staff would like to receive direction from the two Boards so Staff will have a more refined draft to present to the Planning Board.

Mr. Zehner then turned over the presentation to Principal Planner Holly White so she could provide the Boards with an overview of the proposed changes to the draft Flood Damage Prevention Ordinance.

Ms. White noted that specific items for discussion include the addition of language to allow for the creation of the Local Elevation Standard (LES); LES and Regulatory Flood Protection Elevations (RFPE) and the Optional language.

Ms. White explained that the preliminary flood maps (F.I.R.M.) which were released in June of 2016, revealed that many areas of the Town would be removed from the Special Flood Hazard Area. Additionally, the Base Flood Elevations had been significantly reduced in areas remaining in the Special Flood Hazard Area. The F.I.R.M. depicts impacts from storm surge for the 1% (or 100-year) and .2% (500-year) flood zones; however, Staff does not believe that the F.I.R.M. accurately represents risks associated with rainfall flooding.

Some of the major changes to the F.I.R.M. include: fewer VE and AE zone properties; an overall increase in X zone properties town wide, even on the oceanfront; removal of causeway properties from VE zone; reduction of Base flood elevations in AE zone (most new BFE's are now 4'or 5', formerly 8'-10'); modification of Base flood elevations throughout entire town; and the addition of AO zones west of primary frontal dune.

Due to concerns raised by many with regards to the lowering of standards and reductions of BFE, Staff worked with planning staff from Dare County and the other municipalities as well as the Outer Banks Home Builders Association to develop a Local Elevation Standard ("LES").

The proposed LES would create an elevation requirement for properties east of NC12 of 12' and west of NC12 of 10'.

Ms. White confirmed for the Board that the definition does not use the word "Freeboard" however Staff is still trying to determine if that language is needed for CRS purposes. Ms. White further explained that the LES is a "freeboard" in its own right, because the Town is regulating to a much higher standard than the zone requires.

Ms. White discussed lateral additions and how they would be affected by LES. Ms. White explained that lateral additions, greater than 10% of the total floor area on the level on which the addition is located, shall have the reference level elevated to or above the RFPE.

Ms. White then reviewed the Optional language for the Board and explained that a non-conversion agreement is something that a property owner would sign, prior to the issuance of a building permit, declaring that the area below the lowest floor shall not be improved, finished or otherwise converted to habitable space.

Ms. White confirmed that the Town would continue to use the standard elevation certificate forms. Chief Building Inspector Cory Tate noted that the Town is considering creating a town specific V Zone Certification form that would include certification language unique to coastal areas for pools, etc.

Ms. White then discussed how Height and Fill are affected by the proposed ordinance. She explained that the way height is measured is not changing. Ms. White and Mr. Zehner confirmed that height is measured from finished grade (after fill).

The Boards then discussed height and how it's measured, and the where and how much fill is or is not allowed. Ms. White and Mr. Zehner explained that fill less than 2' would only be allowed for landscaping, drainage, parking, pool decks, and patios. No structural fill is allowed in V flood zones. If fill was greater than 2', an analysis would be needed by an engineer. The Boards further discussed how fill is relative to height and where height is measured from when fill is included. Staff explained that height is measured from finished grade (after fill) except in the special flood hazard areas east of NC 12, where height is measured 18" above highest, undisturbed finished grade or "free of obstruction" directly beneath the structure. Mr. Zehner noted that the way height is measured is not changing and that the proposed language does not penalize property owners for meeting flood regulations.

Mayor Cahoon indicated that there has been a separate discussion on fill that should be concluded soon. Mayor Cahoon noted that the maps and flood ordinance will be adopted ahead of the fill ordinance. Staff and the Board will need to remember when the fill ordinance is adopted that the flood ordinance and height measurements will need to be consistent between the ordinances.

Mayor Cahoon recapped the major changes to the ordinance: 1)Two elevation standards: one for those east of 12 and one for those west of 12; 2) Resolving question about freeboard and whether than language needs to part of the definition for the LES; 3) Lateral Additions and 4) Measuring Height relative to flood standards). Mayor Cahoon asked if there were any other significant changes.

Town Manager Andy Garman noted that the modification of the substantial damage and improvement language was also a significant change. Currently, a property is either in or out flood zone. If a property is in a flood zone, they have to comply with the 50% language or the substantial improvement/damage definitions. Mr. Garman explained that with the adoption of the LES, if a property were in an x flood zone then the substantial improvement rule would not apply. He noted that was a big difference than in the past. Mayor Ben Cahoon said this would help some of those structures that have not been able to make those improvements in the past and staff concurred.

Staff presented the online preliminary maps and Staff and the Board examined the differences between the currently adopted and the preliminary maps. The Boards looked at specific examples of commercial structures that may be positively impacted by changes to the substantial improvement language.

The Boards then discussed how the preliminary maps were developed and why the changes were so significant in the preliminary maps. The question was raised whether the Town has to adopt the maps. Mr. Zehner responded that the Town is required to adopt the maps and ordinance if it wishes to remain a participant in the National Flood Insurance Program (NFIP). Mr. Zehner noted that the proposed regulations keep development consistent with the today's standards.

The Boards were concerned about the message that adopting maps would send to homeowners- that flood insurance is not needed because the FEMA maps remove you from the flood zone. The Board was concerned that property owners need to understand that they still need to keep their flood insurance and that there could be long term implications and increases to their flood insurance if there was a lapse in coverage.

There was a question on the mapping of the flood zones and whether the Town would have two maps. This potentially could be confusing to property owners and developers. Mr. Zehner responded that the Town would only utilize the FEMA maps. He further explained that property owners would not be able to just look at the FEMA map and use it for regulatory purposes for any community in Dare County; that is why a geographic boundary was suggested – an LES east and west of 12.

Mayor Cahoon suggested that Staff develop an elevation requirement map reflecting the LES, that can be posted to the website.

A question/concern was raised about sound side and causeway areas that are at high risk for flooding and yet seem to be regulated at a lesser standard than the oceanfront, this led to more discussion about the accuracy of the maps, the process for developing the maps, and the resulting need for the local elevation standard.

The Boards further discussed the language specific to substantial improvement/damage using the Fin and Feather Motel as an example and it was noted that how the language is applied may be misunderstood. There was a general concern that legacy structures not be penalized for non-conformities.

The Board concluded their meeting with discussion about variances as they relate to construction below the RFPE and the variance process in general.

Mr. Zehner requested that any points that the Boards want carried forward to the Planning Board's next meeting in March be submitted to Staff so that there is no delay.

Mayor Cahoon requested that a memo summarizing the joint discussion be developed and provided to the Board of Commissioners prior to their next meeting.

The Board of Commissioners voted to recess to their afternoon meeting. The Planning Board took a brief recess at 10:15 and reconvened at 10:25 a.m.

Public Comment/Audience Response

Porter Graham, Government Affairs Director for the Outer Banks Home Builders Association, thanked the Boards for participating in the discussion of the proposed Flood Ordinance. The OBHBA is concerned about risk to homes that will be newly in the X zone. They want to ensure that property owners keep their flood insurance. Mr. Graham expressed concern about the Town's proposed building standard element (LES) 10 ft. standard on X and shaded X properties vs. 8 ft. which has been proposed by Donna Creef with Dare County. Mr. Graham inquired whether Planning staff had looked at future sea level rise in addition to historical flood data. Mr. Graham also questioned the Town's requirements related to lateral additions noting that Duck is the only other municipality that does not allow lateral additions at the same level. Mr. Porter thanked Mr. Zehner for communicating with the Association.

Approval of Minutes

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

Establishment of Regular Meeting Dates for Calendar Year 2020

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

Action Items

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.

Mr. Zehner introduced the item explaining that this proposed text amendment was discussed preliminarily at the Board's January meeting. Based on the discussion and feedback provided at the meeting, the applicant (Kate Creef, Assistant General Manager, on behalf of Outlets Nags Head) submitted a revised and refined ordinance for the proposed text amendment and markup of the relevant sections of the UDO.

Originally, 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. At that time, Mrs. Creef also indicated that there was 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.

Modifying the original proposal, the request now is 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 to two.

Mr. Zehner gave the Board a brief history related to outdoor stands and noted that 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 years.

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 recommend 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.

Kate Creef with Outlets Nags Head addressed the Board. Mrs. Creef 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 they believe would enhance the

customers' shopping experience. They agree that adding the definition to outdoor stands is a good idea but would also like to be able to have a produce stand or hot dog stand to serve the needs of their customers, to increase the time customers spend at the outlets, increase sales and improve the overall shopping atmosphere.

Mrs. Creef confirmed for Mr. Gwinn that they would like to put the Reservation Stand under the terrace area, in the center of the Outlets. Mrs. Creef noted that terrace area has room for a small food cart as well, if allowed.

Mr. Ferguson suggested that they have building inspector or public safety have a look at the proposed locations to make sure that they are accessible.

Mr. Elder agreed with Mr. Ferguson's suggestion and Ms. Lambert concurred noting that they require this even for dumpster enclosures.

Mr. Zehner noted that this requirement can be part of the minor site plan review process or they can add a provision to the ordinance that stands are subject to this type of review. The Board discussed this and agreed that this requirement could just be part of the administrative review.

After some further discussion with regards to stationary vs. mobile stands, David Elder moved to recommend approval of the proposed text amendment as submitted; Meade Gwinn seconded the motion and it passed by unanimous vote.

Consideration of a Text Amendment to the Unified Development Ordinance to correct identified typographical errors.

Principal Planner Holly White explained that since the adoption of the Unified Development Ordinance (UDO) on August 7, 2019, Staff has found minor typographical errors throughout the document. Ms. White noted that 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 would recommend that the amendment be adopted as outlined in staff's memorandum. Ms. White said she would be happy to answer any questions for the Board.

Ms. White confirmed for Mr. Gwinn that these proposed revisions do not change the language or intent of the UDO.

Gary Ferguson moved to recommend adoption of the proposed text amendment, David Elder seconded the motion and it passed by unanimous vote.

Report of Board of Commissioners Actions

Mr. Zehner provided the Board with a brief update from the February 5, 2020 BOC meeting; of note the BOC approved the vested right site plan/conditional use application for the Outer Banks Hospital's addition to the existing radiation therapy building. In addition, several other items were discussed including: the Flood Prevention Ordinance, large occupancy/event homes, legacy options in the UDO and workforce housing.

Town Updates

None

Discussion Items

Continued Discussion of Regulation of Large Occupancy/Event Homes

Deputy Planning Director Kelly Wyatt explained that this was a continuation from the Planning Board's January meeting where they discussed large occupancy/event homes. As Mr. Zehner noted, Staff provided the Board of Commissioners with a brief memo and update at their February meeting requesting guidance on how to proceed.

The BOC 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 regarding large events being held within single-family residential dwellings. It was the consensus of the Commissioners that the Planning Board and Staff continue to move forward with discussion on the regulation of such events.

Additionally, the BOC 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 suggests 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 will require additional time and coordination.

With regards to the regulation of events being held within single-family dwellings within the Town, Staff would recommend consideration be given to developing criteria like the Town of Duck's "Wedding Event Registration Policy". If a wedding-related event in the Town of Duck involves more than 50 people, they are required to complete a registration form and return it to the Town within 30 days in advance of the event. The form is then 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 contact can be made prior to or during the event should it be necessary. As part of the registration process, applicants are provided the Town's regulations for signage, noise and trash removal. Additionally, applicants must demonstrate that enough 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. Ms. Wyatt provided the Board with a copy of Duck's registration form in her staff memo.

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 an amendment to the Town Code, likely within Chapter 4, Amusements, Entertainments, Mass Gatherings and Commercial-Outdoor Recreational Uses. 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 meeting.

Ms. Wyatt explained for Mr. Ferguson that currently there is no regulation/limitations as far as a how many events can take place in a single-family dwelling; the Town only regulates large scale crowd gathering events.

Mr. Elder stated that in other towns there are houses that host multiple weddings in one week. Ms. Wyatt noted that although the Town does not currently regulate the use, the Town does regulate the "symptoms" via the noise ordinance, parking ordinance, etc.

Mr. Elder expressed concern that many weddings take place on the beach and result in multiple items left on the beach all day. Mr. Elder inquired if this issue could be addressed as part of the registration process. Ms. Wyatt confirmed that the Town does regulate items left on the beach overnight.

Mr. Gwinn agreed that it would be good to incorporate other ordinances (such as items left on the beach) into the registration process.

Ms. Wyatt confirmed for Ms. Harrison that the registration is not intended to limit events. Ms. Wyatt further explained that there are no requirements currently so issues are only complaint driven where the Police Department often get involved; this registration could eliminate some of the noise, parking and other safety issues.

Chair Vaughan inquired how participants would learn about regulations? Ms. Wyatt stated that the Town will need to work with Rental companies, wedding planners, social media, etc. to educate the public.

Ms. Wyatt explained for Mr. Ferguson the difference between a crowd-gathering permit and this proposal noting that those permits are for public events hosting over 100 participants.

After some further discussion, the Board agreed to have Staff bring forth a draft amendment.

Discussion of Legacy Establishments/Structures

Mr. Zehner explained that Staff was recently approached by individuals interested in purchasing the Blue Heron Motel at 6811 S. Virginia Dare Trail. During discussions about their interest/intent for the property it became obvious that there are limitations imposed by Town Code requirements on the evolution of the current use of the property.

There is lengthy discussion in the Comprehensive Plan regarding legacy structures and 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.

Generally, 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. In addition, 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 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.

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.

Mr. Zehner suggested as part of the initial discussion, it would be helpful for the Board to discuss perspectives regarding what does and does not constitute a legacy business or structure, what are the defining characteristics, and what businesses or structures typify the term.

Mr. Zehner confirmed for Mr. Ferguson that we don't know if it's the business or the structure that has the legacy component; the Town has not made that distinction; it could be either/or both. There are buildings around Town where the importance is the building then there are other situations where the importance is the use of that building. Mr. Zehner also noted that there will be situations where it could be both.

Ms. Vaughan noted that while she understood how the ordinance might limit non-conforming structures and how it might benefit the Town to reduce those limitations, she was unsure how that applied to non-conforming uses.

Mr. Zehner used the example of the Blue Heron Motel where it is both a non-conforming use as well as a non-conforming structure. In that case they would be limited on their ability to expand that use by adding for example a restaurant or coffee shop, in order to make that use more dynamic or evolve the way the use operates.

Mr. Zehner confirmed for Mr. Ferguson that hotels are no longer allowed in that district. Mr. Zehner also confirmed that allowing a hotel to add a restaurant shop or even a swimming pool with the idea of making the hotel more viable would be seen as increasing the non-conformity.

Mr. Ferguson suggested perhaps looking at the non-conforming section and making changes to that. Mr. Zehner disagreed stating that it by calling it a non-conforming entity, it goes against the intent of the Town with regards to legacy businesses/structures.

There was further discussion about what is considered the legacy aspect – the use or the structure; as well as what a non-conforming use is currently allowed to do as far as modifications in order to make that business more viable.

Mr. Zehner explained that it comes down to whether the Town would rather see that use or building go away or would the Town rather institute flexibility the use to stay and evolve. The Board agreed that they prefer the flexibility.

Mr. Zehner confirmed for Mr. Elder that once they establish what a legacy business/structure is or isn't they would suggest allowing modifications via the Conditional Use Process to ensure that the modifications meet the Town's requirements.

Ms. White confirmed for Chair Vaughan that the Focus Advisory Committee identified approximately 32 to 34 legacy businesses/structures in Town that may or may not be nonconforming.

Staff agreed to bring back to the Board some parameters and a list of non-conforming "legacy" commercial properties including the age of the property to give the Board a sense of what is out there an allow them to zero in on defining what makes them a legacy property.

Discussion of Residential Stormwater Regulations

Mr. Zehner explained that given the continued importance and focus on stormwater, the Board of Commissioners asked him to attend their retreat on January23, 2020 to discuss the Town's residential stormwater regulations.

Following the Board of Commissioners' discussion, the Board directed Staff to present the Board's perspectives and the options identified by Staff to the Planning Board for review and consideration of any recommended actions.

Mr. Zehner reviewed for the Board the types of development activities that trigger the regulations and ordinance requirements.

During their discussion at the retreat, the Board of Commissions noted guiding principles for further review and consideration of the residential stormwater regulations. Mr. Zehner reviewed those principles with the Planning Board.

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 options identified by Staff, to determine whether related actions may be necessary so that the regulations are more consistent with those principles. Those options are as follows:

•Improve education and availability of resources
•Enhance ordinance incentives for preferred outcomes
•Provide an administrative option for engineering analysis to exempt or reduce requirement so This may be an option, but conditions or standards allowing for exemption would need to be identified.
•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 the design guidelines

Mr. Zehner discussed these options further giving examples of each as noted in his staff memorandum.

Staff would recommend 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.

Mr. Zehner noted that he envisions this discussion will take several meetings before any conclusions are reached.

Town Engineer David Ryan discussed the previous stormwater regulations which had two separate levels of stormwater management and were tied to fill; depending on the amount of fill determined whether the plan was non-engineered vs. engineered. Mr. Ryan confirmed for Mr. Ferguson that non-engineered plans required you to contain 1.5" of volume on site. Engineered plans required you to contain 2.15" of volume on site. Mr. Ryan stated that what the Town has now is somewhere in the middle.

Mr. Ferguson noted that there seem to be some communities that allow for exemptions based on money and suggested that they consider a Fee in Lieu option.

Mr. Ryan stated that while he was aware of this option, what the Town is trying to do is come at it from a low impact development standpoint and manage stormwater at the source, prior it to getting into the drainage systems.

Mr. Ryan explained that the Town is taking a more holistic approach to stormwater management through improvements, restoration, maintenance, partnerships with DOT and other agencies and research in order to address the issue.

Ms. Lambert noted that these changes have made a big difference in her neighborhood.

Mr. Elder discussed septic and septic permitting and how that impacts the Town's regulations. Could the Town work with Dare County on the permitting side.

Mr. Ryan noted that Staff has tried to coordinate with the County on this issue, but ultimately it is the County's decision.

Mr. Elder stated he likes the idea of providing a credit for reducing site disturbance, lot clearing, or filling.

After some further discussion the Board agreed that there is a lot to consider and will discuss it further at their next meeting.

Discussion of FY20-21 Planning & Land Use Work Plan

Mr. Zehner explained that in discussions with members of the Planning Board at their recent retreat, the Board of Commissioners encouraged the Planning Board and Staff to work jointly on the development of a Work Plan for the next fiscal year, in conjunction with the development of the budget, to establish priorities relating to planning and land use; in short, this Work Plan would be a collection of prioritized actions and activities serving as a strategic plan to implement various initiatives and plans.

For the Board's consideration:

•Plan Implementation: Staff would suggest that activities included in the Work Plan focus on implementing the following four (4) plans:

- Town of Nags Head Comprehensive Plan, July 5, 2017
- Vulnerability, Consequences, Adaptation, Planning Scenarios (VCAPS) Report, August 2017
- Town of Nags Head Parks and Recreation Plan, January25, 2012

- Nags Head Pedestrian Plan, July 16, 2014

Additional consideration should be given to activities contained in the Town's Decentralized Wastewater Management Plan (2005) and Hazard Mitigation Plan(2015); however, an updated Hazard Mitigation Plan is expected to be presented for adoption in June/July 2020 and the update of the Decentralized Wastewater Management Plan is an active project, expected to be initiated in the current fiscal year.

•Vision & Goals: As noted, the Work Plan should serve as a strategic plan to implement various initiatives and plans, but activities in the Work Plan should also work towards the achieving the accepted vision and goals for the Town.

•Work Plan Categories: For the purpose of the Work Plan and intended to highlight as well as focus the implementation of specific plans, the Vision, Goals, Key Concerns, and Guiding Themes, Staff is suggesting that Work Plan activities by categorized in at least one of five categories.

Staff would recommend that the Planning Board review the information outlined above, and specifically the implementation matrixes from the four (4) plans and suggest any focus or priority activities for the Work Plan.

Mr. Zehner asked that Board begin to think about ongoing projects and tentatively identify priorities, and timeline and resource limitations. The Board agreed that this is an important task which will give them some structure and allow them to communicate better with the Commissioners.

Planning Board Members' Agenda

None

Planning Board Chairman's Agenda

None

Adjournment

There being no further business to discuss, a motion to adjourn was made by David Elder. The time was 12:11 AM.

Respectfully submitted,

Lily Campos Nieberding

DRAFT

MEMORANDUM
Town of Nags Head
Planning & Development Department

To: Planning Board

From: Kelly Wyatt, Deputy Planning Director
Michael Zehner, Director of Planning and Development

Date: March 13 2020

Subject: Consideration of a zoning ordinance text amendment pertaining to "Tutoring Facility/Learning Center".

BACKGROUND

Megan Dixon and Kim Cowen have submitted the attached text amendment request to the Unified Development Ordinance, which, if adopted would permit "Tutoring Facility/Learning Center" as a permitted use within the C-2, General Commercial Zoning District.

The applicants have provided a detailed explanation of the nature and reason for their request. They would like to offer tutoring, both part- and full-time, to registered homeschooled children, ages 6 and up. Ms. Cowen has spoken with both me and the Senior Building Inspector, Steve Szymanski, about the proposed business use. In looking at the current UDO, similar uses included Child Care Facility and School, however, by definition, the proposed use would not meet either of these use classifications. Therefore, it was recommended to Ms. Cowen, that she proceed with a text amendment request to consider establishing this new use.

STAFF ANALYSIS AND RECOMMENDATION:

Planning staff finds the proposed use is consistent with the 2017 Comprehensive Land Use Plan and the desire to encourage land uses that serve the needs of both year-round and seasonal residents in support of the town's overall vision for the community. Staff would recommend the use be listed under the *Service* category in the Table of Uses and Activities and be defined as follows:

> ***Tutoring Facility/Learning Center*** means a private, for profit or non-profit, use for the instruction of students in subjects and materials commonly taught in primary and secondary schools, for test-preparation, or the teaching of music and visual arts.

Staff recommends approval of the proposed use as presented, with the changes noted.

(DRAFT)
AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF NAGS HEAD, NORTH CAROLINA PERTAINING TO PROPOSED NEW USE "TUTORING FACILITY/LEARNING CENTER"

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, a text amendment application has been requesting consideration be given to permitting "tutoring facility/learning center" within the C-2, General Commercial Zoning District' and

WHEREAS, the Town of Nags Head 2017 Comprehensive Plan includes policies supporting land uses that serve the needs of both year-round and seasonal residents in support of the town's overall vision for the community and to support and foster small, local businesses that preserve and uphold the vision and legacy of the town.

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.

PART I. That **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**
Service	Tutoring Facility/Learning Center						P		

PART II. That **Section 10.16 Required Parking by Use** be amended as follows:

Use Category/Class	Use Type	Required Parking
Institutional	Tutoring Facilities/Learning Center	One parking space for each 300 square feet of gross floor area.

PART III. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. This ordinance shall be in full force and effect from and after the ___ day of ____ 2020.

_____
Benjamin Cahoon, Mayor

ATTEST:

_____
Town Clerk

APPROVED AS TO FORM:

_____
Town Attorney

Date adopted: _____

Motion to adopt by Commissioner _____

Motion seconded by Commissioner_____

Vote: _____ AYES _____ NAYS

App # 202010230

ZONING AMENDMENT APPLICATION
TOWN OF NAGS HEAD, NORTH CAROLINA

Applicant Outer Banks Montessori Collective

Mailing address 202 Shallow Street KDH 27948

Explanation of request

☐ 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

A text amendment to create a new use category for a learning center in C-2 Zone in Nags Head

Reason for request

We are an academic service business - we provide tutoring, part & full time, to homeschool families. Each child we serve (ages 6+) is a registered homeschool child. Families can choose from a range of services - from 1 hour sessions up to 6 hours/day, 5 days a week & everything in between (3x/week, 1 week in 3/week off, 9-1, etc) We use the Montessori methodology as the bases of our services. Montessori includes the use of didactic, hands on learning materials that homeschool families might not have at home. We will have anywhere from 1-25 students in our space at one time.

We are not a school, we don't fit into any of the existing use categories (school, childcare, etc), And so we propose a new use that would accomodate us as a learning center / academic services, specifically to serve local homeschool families.

Applicant (Megan Dixon) & (Kim Cowen)

2/18/20
Date

757-613-1873

BOC ACTIONS
WEDNESDAY, MARCH 4, 2020

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

2. Agenda – The Board approved the March 4th agenda as presented.

3. Recognition:

New employee – Dep Town Manager Andy Garman introduced new employee Information Technology Assistant Karen Snyder who was welcomed by the Board to town employment.

Ten years – Police Chief Phil Webster introduced Dep Police Chief Perry Hale who was recognized by the Board for ten years of service.

Proclamation in support of Safety Week - Dep Fire Chief Shane Hite announced Safety Week which is scheduled for March 9 – 13, 2020; he introduced the Safety Committee members: Brie Floyd, Nancy Carawan, Jackie Hart, Ed Snyder, Perry Hale, Ron Watson, and Ray Schoonmaker. Members Trey Allen, Greg South, Keefe White and Eddie Hawley were not able to attend. Dep Chief Hite detailed the work of the Safety Committee and the upcoming activities planned for Safety Week.

The Board adopted the Safety Week Proclamation as presented and suggested that the committee consider offering a CPR class to the public.

4. Presentation - Dowdy Park Review of 2019 Season and Plans for 2020 Season - Dep Planning Director Kelly Wyatt summarized the 2019 accomplishments of the Town's Art and Culture Committee and detailed the plans for the 2020 year. Ms. Wyatt noted that Dowdy Park Events Coordinator Paige Griffin was unable to attend today's meeting.

5. Presentation - 2nd Annual Community Clean Up – Public Works Office Manager Karen Heagy and Public Works Office Assistant Sue Cummings detailed the upcoming 2nd Annual Community Clean Up which is scheduled for Saturday, March 28th beginning at 8 am at Dowdy Park. Ms. Heagy stated that she hopes next year to schedule a more widely-participated clean up with representatives from each of the town's neighborhoods.

6. Public Comment:

David Bragg, Village at Nags Head resident; since recycling is being incinerated not recycled and it appears the contractor was not forthcoming with this information, he questioned why the town continued the contract; he would like a public forum scheduled with town officials re: trash cart rollback issue – we now pay two people to roll carts back only on the Beach Road; Facebook page – he would like the town to limit postings to only facts – not opinions.

Donny King, Better Beaches OBX; lives in Nags Head and is owner of Ocean Boulevard Restaurant; he is requesting that more sand fencing be installed for additional beach stabilization; the last fencing installed has done its part and is mostly covered; there is a lot of representation of Better Beaches OBX with many volunteers in the audience; he would like the Town to allocate more funds for sand fencing to catch more sand in the right places; he thanked the Board for the town's recent Beach Nourishment Project.

Ellen Heatwole, Seagull Drive; she applauded the town for Beach Nourishment Projects which have been fantastic and sand fencing has done its job; a lot of the grass planted however has not survived; she supports Donny King of Better Beaches OBX and spoke in favor of his initiative to install more sand fencing and grass on the beach.

Lee Nettles, OBVB Executive Director; spoke of proposed ideas for the Soundside Event Site - the proposed facilities are expected to draw new visitors to the area to support year-round visitation to Dare County; septic could be addressed on site but at the expense of green space; no commitments have been made yet; they welcome the opportunity for the town to assist in the project.

7. Consent Agenda – The Consent Agenda was approved as presented and consisted of the following:

- Budget Adjustment #9 to FY 19/20 Budget
- Tax Adjustment Report
- Report of Tax Delinquent List to be advertised
- Approval of minutes
- Resolution clarifying Dare County Control Group / Town MOA of Oct 2015
- Resolution authorizing installment contract to finance the vehicles/equipment in FY 19/20 Budget

- Request for Public Hearing - to consider resolution authorizing entering into an Installment Purchase contract in an amount not to exceed $1,449,793 to finance improvements in FY 19/20 Budget

- Request for Public Hearing - to consider text amendment to the UDO submitted by a property owner to expand the principal sale items from outdoor stands to include reservations/tickets for events

- Request for Public Hearing to consider a text amendment to the UDO to correct identified errors

8. Update from Planning Director - Flood Map ordinance overview - Board members expressed their concern for the revised flood maps which they feel have no sustainability. It was noted that most of the modeling for the maps was done on the oceanfront yet most of the flooding does not occur there.

Mayor Cahoon stated that it would be beneficial for the Board to see the information that is to be presented at next week's informational session as soon as possible; to make sure elevation standards being proposed are adequate.

It was noted that in the Planning update report, Year-To-Date is off on residential construction by over 50%, commercial is down and revenues from construction are more than one third off; Director Zehner was questioned if there is any concept as to what is going on in the home building industry and if this trend in Nags Head is being seen in other towns? Director Zehner stated that he would speak to other municipalities to see if they are seeing a similar trend and to the homebuilders for a possible explanation.

9. Mayor Cahoon - Mayor Cahoon noted that both of the tabled items have been continued by the applicants: Southridge Subdivision Coastal Villas Subdivision Preliminary Plat (to the May 6th Board meeting) and Gone Coastal Shopping Center Major Site Plan (to the April 15th Board meeting).

10. Committee reports:

Comr. Fuller – Dare County Tourism Board (DCTB) – he clarified what Executive Director Lee Nettles was speaking about during Public Comment earlier today: Director Nettles was asking if the Board would consider the following concerning proposals for the Soundside event site:
- Will the Board consider a reduction in parking standards? and

- Will the Board consider allowing central sewage already located in Nags Head (Village at Nags Head) to be extended to the Soundside event site?

It was Board consensus to take no action re: looking into reducing parking standards nor extending central sewage from Village at Nags Head to the Soundside event site.

11. Recommendations for beach nourishment services - The Board passed a motion to invite Moffit & Nichol to make a presentation to the Board, and to authorize the Town Manager to enter into contractual negotiations with them for Beach Nourishment Project surveying services with all relevant material to come back to the Board. The Board also passed a motion to authorize the Town Manager to enter into contractual negotiations with McKim & Creed for Beach Nourishment Project coastal engineering and design services.

12. Proposed Municipal Services Districts (MSD's) - Three new proposed districts were presented:

District 3 – Eighth Street (northern town line) south to Bonnett Street (includes all properties east of Wrightsville Avenue)

District 4 – Bonnett Street south to Gulfstream Street (from Bonnett Street to Bainbridge Street - includes all properties east of Wrightsville Avenue; from Bainbridge Street to Hollowell Street – includes all properties with frontage on and east of Memorial Avenue; from Hollowell Street to Gulfstream Street – includes all properties east of US 158)

District 5 – Gulfstream Street south to southern town line (includes all properties south of Gulfstream Street)

The Board passed a motion to schedule a Public Hearing to consider the proposed MSD's, as presented, to include the addition of Old Nags Head Place in the proposed District 4 - for the May 6th Board meeting.

13. Board/Committee appointments – The Board reappointed Angelina Lowe and John Mascaro to additional three-year terms on the Board of Adjustment. In addition, the Board reappointed Perry White and Saundra Futrell to additional three-year terms on the Personnel Grievance Panel.

14. Town Manager Ogburn - Sanitation and Recycling – Board members agreed with Town Manager Ogburn to take no action at this time on the trash cart rollback ordinance allowing him to continue working with neighborhood associations on this issue.

15. Town Manager Ogburn – Sand fencing/sprigging - Town Manager Ogburn was authorized to do a test pilot project on the beach with hay bales in addition to the sand fencing/sprigging. The Board adopted Budget Amendment #8 to the Beach Nourishment Capital Project Ordinance as presented.

16. Town Manager Ogburn – Speed limit on NC 1243 in S Nags Head (Old Oregon Inlet Road) - the Board passed a motion to authorize staff to request that NCDOT reduce the speed limit on NC 1243 from Juncos Street south to the town line from 45 MPH to 35 MPH.

17. Town Manager Ogburn – Town Manager Ogburn announced that on Monday, March 30th at 2:30 pm at the Dare County offices, a meeting will be held with the County, municipalities, restaurant associations and DENR to see what future recycling options may be available.

18. Mayor Cahoon pointed out the following upcoming Town information sessions/events:
- Multi-use path construction meeting – Thursday, March 5th from 5:30 to 7 pm – Board Room

- Flood Map & Flood Map Prevention Ordinance – Monday, March 9th - 5:30 to 6:30 pm – Board Room
- Town Safety Week – March 9th to 13th
- Green Drinks and Stormwater Updates – Wednesday, March 11th at 7:30 pm at Waveriders Restaurant
- Sunshine Week – March 15th to 21st
- St. Patrick's Parade – Sunday, March 15th
- CIP Workshop – Wednesday, March 25th at 9 am – Board Room
- Community Clean Up starting at Dowdy Park – Saturday, March 28th at 8 am

19. Comr. Brinkley – Comr. Brinkley thanked Donny King of Better Beaches OBX and Ellen Heatwole for speaking today concerning the organization and in support of additional beach sand fencing.

20. Comr. Brinkley – Comr. Brinkley confirmed with Attorney Leidy that the Town does not have the option to sue Bay Disposal re: incinerating recycling materials rather than true recycling per the contract. Attorney Leidy said that suing does not apply to that particular provision of the contract – and would also be counter-productive since the Town is still utilizing the company.

21. Mayor Cahoon – Workforce Housing - A meeting is being scheduled with local mayors for Thursday, March 12th to discuss J1 International workers and housing issues. Details are being finalized. A speaker is coming from Wisconsin where a program was developed to solve their seasonal housing problem. Possibly a model can be utilized for this area. Town Clerk Carolyn Morris is to send details of the meeting to Board members when received.

22. Mayor Cahoon - Future Town Vision (from Jan 2020 Board Retreat) – He presented his ideas for a future vision of the Town; He encouraged Board members to bring forward their ideas to add to the list.

23. Closed Session – The Board entered Closed Session to discuss the Town Manager's review and to discuss and preserve attorney/client privilege at 11:40 a.m.

24. Open Session - The Board re-entered Open Session at 1:08 p.m.

25. Adjournment - Mayor Cahoon recessed the Board meeting to Wednesday, March 11th at 9 am in the Board Room. The time was 1:10 p.m.

MEMORANDUM
Town of Nags Head
Planning & Development Department

To: Planning Board

From: Kelly Wyatt, Deputy Planning Director

Michael Zehner, Director of Planning and Development

Date: March 13, 2020

Subject: Discussion of Large Occupancy Homes

Following discussion with the Planning Board at their January 2020 meeting, and guidance from the Board of Commissioners at their February 2020 meeting, Planning Staff has initiated review of the concerns expressed with large occupancy homes. Both the Planning Board and the Board of Commissioners recommended staff review the Town's standards in relation to the proposed amendments being considered by the Town of Kill Devil Hills.

Town of Kill Devil Hills planning staff was given direction to draft amendments to address safety issues and options to incentivize fire suppression systems for large single-family dwelling units. At their March 9, 2020 meeting Kill Devil Hills staff presented an amendment which would increase side yard setbacks for single-family/duplex dwellings greater than 6,000 square feet in area by two feet in order to provide adjacent properties and the overall community a greater safeguard from the spread of fires. Such dwellings could be exempt from this requirement, providing a fire suppression system is reviewed, approved, installed and inspected annually by the Fire Marshal. It is noted that this installation of a fire suppression system provides safeguards for the persons occupying the dwelling in addition to the adjacent properties, and overall community.

Side yard setbacks in the low- and high-density residential zoning districts within the Town of Kill Devil Hills are determined by the overall lot area. These requirements are outlined below:
Lots 5,000 sf or less = 6 ft. side yard setback
Lots greater than 5,000 sf but less than 7,500 sf = 8 ft. side yard setback
Lots greater than 7,500 square feet = 10 ft. side yard setback

Side yard setbacks in the Ocean Impact Residential zoning district within the Town of Kill Devil Hills is determined by lot width. These requirements are outlined below:
Lots less than 75 ft. in width = 10 ft. side yard setback
Lots greater than 75 ft in width = 12 ft side yard setback

It is important to note that the increased 2-foot setback applies to homes that are greater than 6,000 square feet in area. Within the Town of Nags Head no home can exceed 3,500 square feet of habitable space if on a lot less than 16,000 square feet in area. On lots greater than 16,000 square feet in area, a dwelling cannot exceed 5,000 square feet. Note, Nags Head has more stringent regulations on total allowable house

size than the Town of Kill Devil Hills. At this time under no circumstance would a 6,000 square foot home be constructed within the Town of Nags Head. Regardless, the minimum allowable side yard setback in the Town of Nags Head would either be 8', 10', 12' or 15' depending on the zoning district.

Additionally, the Town of Kill Devil Hills Commissioners considered and recommended proceeding with drafting an ordinance that would amend Off-street Parking and Loading Requirements as it pertain to emergency vehicle access. This amendment would pertain only to dwellings with eleven (11) or more required parking spaces and would incentivize these dwellings to provide a 10-foot wide marked and unobstructed drive aisle up to within 20 feet of the front entrance of the dwelling by reducing the side yard setback for the driveway from 7 feet to 5 feet.

There are several items to note with regard to the Off-street Parking and Loading Requirements within the Town of Nags Head (Article 10, Part II attached).

- With habitable area of a dwelling capped at 5,000 square feet, while we cannot regulate the number of bedrooms, we see between 8 and 9 bedrooms being approved by the Dare County Health Department in the large residential dwellings. With a parking standard for single-family and duplex dwellings of the number of bedrooms minus 2, it is very unlikely there will be a parking scenario within the Town necessitating eleven (11) required parking spaces.
- Residential driveways shall be a minimum of 12-feet in width within the Town of Nags Head. The minimum 12-foot width must extend to the front plane of the house and no stacking of vehicles is permitted in this 12-foot drive aisle. Thus, only one 10 x 18 parking space can be provided in the main drive aisle.

In review of the Town of Nags Head's current requirements in contrast to the proposed amendments by the Town of Kill Devil Hills to address Large Occupancy Homes, it appears that Nags Head's requirements are already significantly more restrictive with respect to the size of homes and setbacks, and address emergency vehicle access to the front plane of the dwelling as presently written.

Staff will be available to continue discussion and answer any questions.

PART II. OFF-STREET PARKING AND LOADING REQUIREMENTS

SECTION 10.11 PURPOSE AND INTENT.

The purpose of this section is to proactively protect, maintain and enhance the public health, safety, environment, and general welfare by establishing requirements to provide the appropriate amount and location of off-street parking and off-street loading which will:

10.11.1. Maintain and increase the level of service of the Town's streets and ability of the Town's street system to safely move traffic;

10.11.2. Facilitate safe access to and from streets;

10.11.3. Avoid conflicts between motorized and non-motorized vehicles and pedestrians;

10.11.4. Maintain and protect the visual attractiveness and community character of the Town;

10.11.5. Promote low-impact development which emphasizes stormwater management, the use of vegetative buffering and landscapes, and the preservation of open space;

10.11.6. Maximize the re-use of existing parking areas; and

10.11.7. Promote re-use of existing commercial sites by allowing for redevelopment to use existing parking configurations in appropriate circumstances.

SECTION 10.12 PARKING LOT REQUIREMENTS FOR SINGLE-FAMILY AND TWO-FAMILY (DUPLEX) DWELLING UNITS.

Permanent off-street parking spaces shall be provided in accordance with the following requirements prior to the completion of construction of any building or structure, or at the time any principal building or structure is enlarged or increased in capacity by adding dwelling units or before conversion from one zoning use or occupancy to another:

10.12.1. Reserved for the Use Intended.
Required off-street parking spaces and loading spaces are permanent areas and shall not be used for any other above ground purpose.

10.12.2. Safety on Busy Streets.
A turnaround area having sufficient maneuvering space, not less than ten (10) feet × ten (10) feet, shall be provided between the designated parking spaces and a minimum of five (5) feet from the right-of-way, so that no vehicle will be required to back into the public right-of-way. Homes which do not front on NC 12, US 158, SR 1243, and oceanfront homes that have lost access due to erosion, shall be exempt from this requirement (see also Section 8.7, Reduction in Development Standards for Erosion Threatened Structures).

10.12.3. Surface Materials Appropriate for Use.

10.12.3.1. Required parking spaces shall be graded and paved with asphalt, concrete, gravel, or other surface material designed to support the intended vehicular loading and in accordance with manufacturer's recommended specifications or other acceptable methods for design of pavement structures. This provision shall not apply in situations where a CAMA permit cannot be obtained for these surface materials.

10.12.3.2. As an alternative to the approved parking space surfaces stated above, an applicant may improve up to twenty (20) percent of the required spaces with reinforced turf pavement. The use of reinforced turf pavements shall be designed to support the intended vehicular loading and in accordance with manufacturer's recommended specifications or other acceptable methods for design of pavement structures. Turf reinforced pavements shall be considered an innovative permeable pavement surface and may be reviewed by the Town Engineer and the fire official having jurisdiction for suitability and shall count as lot coverage in the same manner as other similar permeable pavement surfaces. Turf reinforced pavements shall be installed and maintained in accordance with manufacturers recommended specifications and NCDEQ BMP manual, latest edition. If the turf reinforced pavement is not being maintained in accordance with the provision above, the owner may be required to re-surface the parking in accordance with subsection 10.12.3.1.

10.12.4. Number of Parking Spaces Required.

Parking spaces shall be based on the following formula: N-2, with N representing the number of bedrooms authorized by the septic improvement permit issued by the Dare County Health Department or the appropriate permitting agency. The minimum number of parking spaces shall be two (2).

10.12.5. Additional Bedrooms.

Prior to issuance of a certificate of completion for the construction of any additional bedroom or bedrooms to an existing single-family or two-family dwelling, all required parking spaces shall be installed.

10.12.6. Dimensional Requirements.

All residential parking area dimensions shall, at a minimum, conform to the dimensional requirements shown in the table below:

TABLE 10-1: RESIDENTIAL PARKING AREA DIMENSIONS

Residential Dimension	Single Side Parking	Double Side Parking
Aisle width (W)	12.0	12.0
Curb-to-curb width (X)	30.0	48.0
Curb-to-aisle width (Y)	18.0	18.0
Minimum stall width (Z)	10.0	10.0
Parallel parking	10' width by 20' length	
*Figures A and B illustrate parking and drive aisle dimensional requirements, setbacks, and acceptable stacking configurations.		

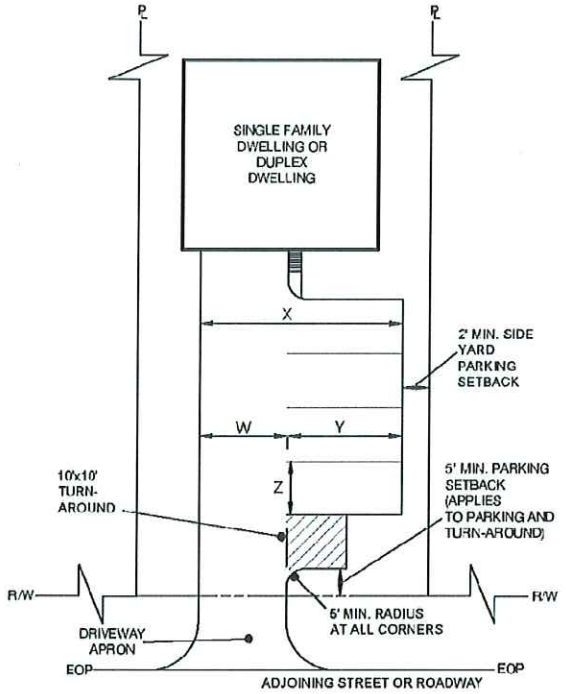

Figure A

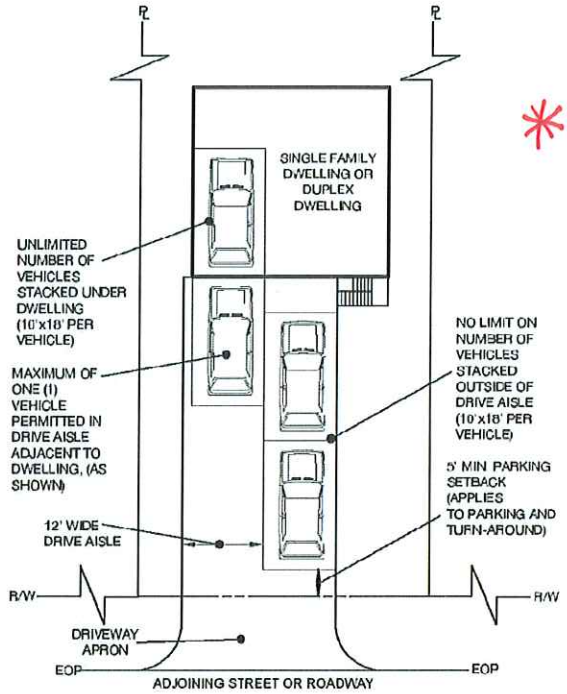

Figure B

10.12.7. Drive Aisle Width and Stacking Requirements.

Drive aisles shall be a minimum twelve (12) feet in width and shall be improved up to the front plane of the dwelling. One (1) parking space may be located at the end of the drive aisle closest to the dwelling. Other stacking of vehicles in the drive aisle is prohibited. Stacking of vehicles under the dwelling or outside of the required 12-foot driveway is unlimited. All parking areas shall be located to allow clear use of a designated turn-around area.

10.12.8. Setbacks for Parking and Drive Aisles.

10.12.8.1. All parking spaces, turn-around areas, and drive aisles shall be located no closer than two feet from any adjacent property line except where drive aisles and driveways are shared between adjacent properties.

10.12.8.2. Parking spaces, turn-around areas, and drive aisles shall be set back from the adjacent right-of-way a minimum of five (5) feet, not including the driveway and driveway apron which connects the parking areas and drive aisle to the roadway pavement.

SECTION 10.13 PARKING REQUIREMENTS FOR ALL USES OTHER THAN SINGLE-FAMILY AND TWO-FAMILY (DUPLEX) DWELLING UNITS.

10.13.1. Permanent off-street parking spaces shall be provided in accordance with the minimum parking requirements contained in this section prior to the completion of construction of any building or structure, or at the time any principal building or structure is enlarged or increased in capacity by adding dwelling units, hotel units, seats or gross floor area, or before conversion from one zoning use or occupancy to another.

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**; updated March 13, 2020**

Subject: Discussion of Legacy Establishments/Structures

Updated content in **bold underline, deleted material in ~~strikethrough~~**

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.~~

This item was initially discussed at the Planning Board's meeting on February 18, 2020, with the Planning Board wishing to consider and discuss options further. Staff has expanded on options for consideration by the Board under the Issues and Options section of this memo.

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 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.*

ISSUES 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~~ **As previously noted, regardless of the approach** 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.

At least as part of the development of the Comprehensive Plan, the Plan's Advisory Committee identified the following characteristics of legacy establishments and structures, acknowledging that further defining of characteristics would be warranted:

- **Small businesses which contribute to the sense of place, quality of life, and high-quality visitor experience within the town.**
- **Businesses which are nostalgic or a reminder of the past, conveying the sense that that life here was different, and helped to tell the story of Nags Head's past.**
- **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.**

Under either approach, the first qualifying condition should be that the use or structure would be considered nonconforming.

With regard to the use-based approach (i.e. similar to the treatment of nonconforming cottage courts), regulations could be developed for the treatment of specific nonconforming uses (i.e. retail, restaurants, hotels) and structures, or a use category for Legacy Establishments could be created, where the definition could limit application to only certain nonconforming uses and structures. However, it would likely be necessary to further define the standards by which a preexisting nonconforming use would qualify as a Legacy Establishment; for example, assumedly it would not be preferred for all nonconforming restaurants to be able to be considered as Legacy Establishments, but perhaps only those that did not exceed 5,000 square feet in size and exist in buildings that were constructed prior to 1980. Under this option, the Legacy Establishment use could require a Conditional Use Permit, where a use meeting the definition and standards could then seek a Conditional Use Permit and be afforded certain development and redevelopment flexibility not associated with the nonconforming status.

With regard to the overlay zoning district approach, there would not be a need to define a Legacy Establishment use, rather, in concept, a rezoning of property on which there is a legacy business or structure could be sought whereby applicable uses or dimensional conditions would be more flexible than the underlying zoning. Under this approach the qualifying standards could be less rigid, but included in the purpose and intent of the overlay district so that legislative discretion could be applied when a rezoning request were sought. Using the same restaurant example from above, perhaps the purpose of the district is to preserve businesses that are nostalgic or a reminder of the past, generally typified as having no more than 5,000 square feet in area and being located in buildings constructed before 1980; since these are not absolute standards, but guidance for legislative action, a restaurant that had 6,000 square feet in area and in a building constructed in 1985, but still determined to be nostalgic or a reminder of the past, could hypothetically be successfully rezoned. Of course, absolute standards could also be imposed defining the circumstances in which the zoning district could not be applied to a property. Under this option it may be necessary to consider whether Conditional Zoning were necessary, to allow greater flexibility for uses and dimensional circumstances, but to limit the use of the property as specifically proposed.

STAFF RECOMMENDATION

~~At least for this initial discussion,~~ Staff would **continue to** 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. **However, Staff would also suggest that the Board discuss the merits of the two options. Generally, Staff is of the opinion that an overlay district approach provides the necessary flexibility, affords discretion, and limits unintended consequences.**

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**; updated March 13, 2020**

Subject: Discussion of Residential Stormwater Regulations

Updated content in **bold underline, deleted material in ~~strikethrough~~**

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.

The Board discussed this item at their meeting on February 18, 2020, however, only brief questions and perspectives were considered, with the Board committing to discussing further at their March meeting.

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. **Generally, Staff believes that positive results would be generated by pursuing options identified above to *improve education and availability of resources* and to *enhance ordinance incentives for preferred outcomes*.**

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?