DRAFT AGENDA
Town of Nags Head Planning Board
Tuesday, May 19th, 2020; 9:00 a.m.

This Meeting will be held electronically/remotely utilizing the online ZOOM meeting platform. Members of the public will be able to attend the meeting using the ZOOM platform or app on their computer or smartphone, or by calling in using a phone.

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A. Call To Order

B. Approval Of Agenda

C. Public Comment/Audience Response

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

Documents:

APRIL 21 2020 DRAFT MINUTES.PDF

E. Action Items

1. Reconsideration 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.

2. Reconsideration Of A Text Amendment To The Unified Development Ordinance pertaining to temporary uses or temporary alteration of uses related to declared emergencies.

F. Report On Board Of Commissioners Actions

May 6, 2020 BOC Meeting

Documents:

MAY 6 2020 BOC ACTIONS.PDF

G. Town Updates - As Requested

H. Discussion Items

1. Continued Discussion Of Legacy Establishments/Structures

Documents:

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

2. Continued Discussion Of FY20-21 Planning & Development Department and Septic Health FY2020-2021 Strategic Work Plan.

I. Planning Board Members' Agenda

J. Planning Board Chairman's Agenda

K. Adjournment

Town of Nags Head
Planning Board
April 21, 2020

The Planning Board of the Town of Nags Head met on Tuesday April 21, 2020. Due to Covid-19 restrictions, this meeting was held electronically/remotely utilizing the online ZOOM meeting platform. Members of the public were invited to attend the meeting using the ZOOM platform or app, or by calling in using a phone.

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

Members Present

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

Members Absent

None

Others Present

Via Zoom: Michael Zehner, Kelly Wyatt, Andy Garman, Holly White, Lily Nieberding

Approval of Agenda

Chair Vaughan asked for a motion to approve the agenda. David Elder moved to approve as presented, Meade Gwinn seconded, and the motion passed unanimously.

Public Comment/Audience Response

None

Approval of Minutes

Chair Vaughan asked for a motion to approve the minutes of the April 1, 2020 meeting. David Elder moved to approve as presented, Megan Lambert seconded, and the motion passed unanimously.

Action Items

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.

Deputy Planning Director Kelly Wyatt presented a request for a text amendment to the Unified Development Ordinance, submitted by Megan Dixon and Kim Cowen, 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 both with Zoning Staff and the Senior Building Inspector about the proposed business use. In looking at the current UDO, similar uses include 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 a text amendment request to consider establishing this new use would be necessary.

Planning staff reviewed the request and found 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. Ms. Wyatt stated that she as well as the applicants, Megan Dixon and Kim Cowen were available to answer any questions for the Board.

Mr. Gwinn noted that he thought it was a great idea. Ms. Harrison agreed.

The applicants confirmed for Ms. Wright that they were looking at hours between Nine AM and Three PM. The applicants also confirmed that they specifically serve the home school community. Their service supplements and complements the home school program.

There being no further discussion, David Elder moved to approve the proposed amendment with the noted changes. Megan Lambert seconded the motion and the motion carried unanimously.

Due to technical difficulties, the Board agreed to move forward in the agenda to give the Applicant for the second Action Item time to log-off and rejoin the on-line meeting.

Report on Board of Commissioners Actions

Planning Director Michael Zehner gave a report on the Actions from the March 4, 2020 and April 15, 2020 Board of Commissioner Meetings. Of note were a presentation on Dowdy Park from Kelly Wyatt reviewing the 2019 season and plans for 2020 season; a presentation from Lee Nettles, OB Visitor's Bureau about the Soundside Event Site; Consent Agenda: Request for Public Hearings regarding Outdoor Stands and Correcting Errors on the UDO & Amendments to Floodplain Ordinance; a report from Mr. Zehner regarding permitting Status & trends; Adoption of an Electronic Meeting Policy; and a Grant Application for Improvements to the Huron Beach Access

Action Items (Continued)

Reconsideration of a Revised Preliminary Plat for a Major Subdivision, known as Coastal Villas, for an approximately 9.86 acre property, zoned R-2, Medium Density Residential, owned by Nags Head Construction (Applicant), located on the west side of US 158, approximately 300 feet south of the

intersection of W. Soundside Road and US 158 (Parcel # 006749004; PIN # 989108886987); the revised Preliminary Plat proposes to create 17 lots, along with an associated street and other required improvements.

Mr. Zehner explained that the (Planning) Board first reviewed this proposal in December and it was sent to the Board of Commissioners with a favorable recommendation. The BOC reviewed this at their January 8th meeting. At that meeting there were numerous public comments made by residents in the Southridge neighborhood with concerns about the access through the subdivision into the new subdivision, which consists of 17 lots.

The Commissioners tabled action until their March meeting, which has since been continued until their May meeting. The Commissioners asked Staff to facilitate a discussion between the developer and owners of the properties on Fourth Street a public paper street to the south of the proposed subdivision. Staff met with the parties several times and had a joint meeting with the parties to discuss reorienting the development. The result of those conversations is a revised plat which Mr. Zehner shared with the Board. Because of the nature of the revisions, Staff felt that it needed to come back to the (Planning) Board for review. The revised plat proposes a new street with access directly from US 158, eliminating the street/vehicular connection to Sea Bass Court) and extends the proposed street to allow for connectivity to the existing Fourth Street right-of-way. The developer is not proposing to make improvements to Fourth Street as part of this proposal however the plat does provide for a cul-de-sac to be developed where the proposed new street terminates, with allowances for the cul-de-sac to be removed if the existing Fourth Street right-of-way to the south is improved.

For additional consideration, Staff was contacted by a property owner along Sea Bass Court requesting that consideration be given to landscape screening of the proposed multi-use path extension through the Mariners Way paper right-of-way, if not also locating the path more central within the right-of-way. Staff believes this is reasonable, and would request consideration to this change, with details for this section of path and any landscaping to be provided in the required construction drawings.

Mr. Zehner noted that he had received a few questions from the Board. The first one had to do with NC DOT. The applicant indicated and provided documentation that they had provided the plat to the appropriate office for some preliminary comments, but they have not yet heard back. The applicant is fully aware of NC DOT permitting and approval requirements and would expect to submit for those approvals following the approval of the preliminary plat and prior to any land development activities.

They would not release construction drawings until they had those approvals from DOT. In concept, the proposed intersection and how it enters US158 would ultimately be subject to review by NC DOT. It is entirely possible that there would need to be some redesign of this that may or may not require this to come back in some form, prior to final approval.

There have been at least two landscape enhancement projects within the NC DOT right of way, one in the 90s and then again in 2000-2003. There was a question as to whether there were any proposed landscape improvements planned within the area along US 158 that would be disturbed by the project and there were none.

Finally, there was a question about the ability to require an undisturbed buffer that are in place in some areas of town where there are residential subdivisions that back up or front along US 158. Mr. Zehner noted that is a specific requirement in the R3 district however this property is zoned R2.

Staff is of the opinion that the submitted and now revised Preliminary Plat complies with all applicable requirements and that the applicant has addressed all issued comments. The applicant would like to name the new right of way Coastal Breeze Way. Given that 4th Street is an unimproved paper public street, Staff may need to coordinate with those property owners it it's improved in the future.

Mr. Zehner stated that he, as well as Cathleen Saunders, on behalf of the applicants, was available to answer questions for the Board.

Cathleen Saunders, Professional Engineer with Quible and Associates, addressed the Board. Ms. Saunders noted that the water is very similar to what the Board had seen before. They still have a loop system and will be modeling all of that for public water supply and will be submitting for a permit. On-site septic will be used for the individual lots and they have done a preliminary evaluation for all of the on-site septic systems throughout the subdivision. Ms. Saunders also noted that Stormwater had previously been discussed, and they have accounted for the Town's and the State's Stormwater Requirement which is an inch and a half; they actually have two and half inches of storage throughout the site.

Mr. Saunders confirmed for Chair Vaughan that what was originally presented a tech review had a connection to the bypass but what was submitted and approved by the Board in December did not have the cut into the bypass. During the TRC meeting there was a recommendation to connect through Mariner's Way so that future residents would have access to go out to a stoplight rather than taking a left onto Croatan Highway. That is what they submitted and got approved by the Planning Board. However, when they went in front of the Commissioners, several Southridge residents expressed concerns so that is what brought them back to this original plan.

Mr. Zehner confirmed that Staff raised questions during TRC about whether having the access on US 158 was an ideal condition and how NC DOT would ultimately view that. They also discussed the possibility of a thru connection from US 158 to unimproved Mariner's Way but that was ultimately not pursued perhaps because it would have resulted in a reduction of the number of available lots. Mr. Zehner noted that the current proposal complies, and staff cannot dictate an alternative, provided that NC DOT gives final approval.

Mr. Ferguson noted that Southridge subdivision had a myriad of pre-platted lots that were platted back in the 30's, 40's and 50's. Mr. Ferguson asked if there were any platted lots underlying this subdivision? Mr. Zehner stated that he was unaware of any and if there were at some point they may have been recombined.

Ms. Saunders confirmed that based on their rough research for the boundary survey they don't have any documentation of previously platted lots. Ms. Saunders stated she was not familiar with the history of the parcel other than at one point it was being looked at to be rezoned commercial, but it stayed residential.

Mr. Zehner confirmed for Ms. Wright that the proposal does comply with the Subdivision Ordinance. There are multiple ways to do this and Staff is appreciative of all the parties working together to come up with a solution that seems to be consistent with the expectations and direction that they heard from the Board of Commissioners. It allows for those lots along Fourth Street to have a future connection and perhaps allows for a thru street looping back to 158 so it's a good outcome.

Ms. Lambert noted that when this was presented a lot of residents were really unhappy then at the Board of Commissioners meeting the applicants were really encouraged to work with the affected parties and it is encouraging to see that they did just that; they made it work.

Mr. Zehner confirmed for Chair Vaughan that there is no formal agreement between the parties. They discussed some initial designs and it was Staff's opinion that the new road had to extend all the way to the common property line to meet the subdivision requirements.

Mr. Zehner confirmed for Chair Vaughan that it was possible that they may end up with two curb cuts between Soundside Road and the Post Office. It will depend on what the Town allows, if and when Fourth Street is improved and also what NC DOT will allow.

Chair Vaughan expressed concern over the proposed curb cut onto the bypass for Coastal Villas and believes it to be a safety issue especially when there is a possibility that the Town might end up with two curb cuts so close to each other. There are already safety issues with cars coming out from Soundside Road. Chair Vaughn feels that what was presented to them in December was the safer option and stated there were minimal concerns since it is a small subdivision with only 17 lots.

Mr. Zehner stated that he did not feel that this was enough basis for denial of the proposed plat as it does comply with the ordinance requirements.

Mr. Zehner confirmed for Ms. Harrison that ultimately it would be up to NC DOT to issue any approvals or permits for those curb cuts and what type of restrictions they impose.

Mr. Zehner explained for Ms. Wright and the Board that the fact that the parties have not come to an agreement yet has no bearing on the application approval process.

Mr. Ferguson stated that he was still concerned about the history of this parcel and how it came about, especially since it is less than 10 acres. Mr. Zehner stated that he does not know that it would ultimately have any bearing on the subdivision, but Staff can certainly investigate.

Chair Vaughan reiterated her concerns related to the curb cut being so close to Soundside Road where there are already existing safety issues, noting she would have preferred access from Mariner's Way. Ms. Wright suggested, and Mr. Elder agreed, that the safety concerns be included with any Planning Board recommendation.

After some further discussion, Chair Vaughan moved to recommend approval of the Preliminary Plat to include the Board's concerns related to safety due to the potential for possibly two curb cuts on 158 and noting that they preferred the plat they approved in December. Molly Harrison seconded and the motion carried unanimously.

Adjournment

Due to ongoing technical difficulties with the online platform, a motion to table the remaining items and adjourn the meeting was made by David Elder. The time was 10:39 AM.

Respectfully submitted,

Lily Campos Nieberding

BOC ACTIONS
WEDNESDAY, MAY 6, 2020

1. Call to order – Mayor Cahoon called the meeting to order at 9 am.

2. Agenda – the May 6th agenda was approved as presented.

3. Public Comment – Dan Hudson, property owner since 2003 – he feels that too much attention has been paid to COVID-19 projections and models which have been inaccurate; people should shelter in place if they don't feel safe; it is time to get the economy on track and open everything up.

4. Public Comment – Clint Sorrell – he would like Dare County opened as soon as possible; those that utilize the beach know it is not difficult to maintain six foot distance from other people; with all of the additional measures in place at retail stores he does not know why Dare County is preventing visitors.

5. Public Comment – David Bragg, Village at Nags Head resident – he feels that unless the town's recycling program will result in a net zero cost or a net gain for the town then its contract with the recycling company should be terminated and the town should focus on providing essential services to residents/visitors during these financially difficult times; a final vote on this matter should be taken today.

6. Proclamation – The Board adopted the proclamation declaring May 10-16 as Police Week as presented; Comr. Brinkley asked everyone to keep the Murray family in their thoughts and prayers (Nags Head Sgt. Earl Murray died in the line of duty in 2009) as they usually attend the ceremony held in Washington DC but is cancelled this year due to the pandemic.

7. Consent agenda – The Board approved the Consent Agenda as presented which consisted of the following:

Consideration of Tax Adjustment Report
Approval of minutes
Request for Public Hearing - citizen comment on the Town Manager's proposed budget for FY 20/21
Request for Public Hearing - to allow "Tutoring Facility/Learning Center" as a permitted use in C-2 District

8. Public Hearing to consider 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 - Applicant Kate Creef spoke on behalf of Outlets Nags Head.

The Board tabled the text amendment discussion concerning outdoor stands and referred the proposal, along with issues expressed by Board members [re: visual impact, signage, and parking] back to the Planning Board for review and recommendation.

9. Public Hearing to consider a text amendment to the Unified Development Ordinance to correct identified errors – The Board adopted the ordinance amending the Unified Development Ordinance to correct identified errors as presented.

10. Public Hearing to consider numerous text amendments to the Unified Development Ordinance as it pertains to updated Flood Maps and update of the Flood Damage Prevention Ordinance

The Board unanimously passed two motions – one to table the Flood Map and the Flood Damage Prevention ordinance discussions to the June 3rd Board of Commissioners meeting. The other motion was that the motion made at the June 3rd Board of Commissioners meeting concerning Flood Maps be a standalone motion and not tied to the Flood Damage Prevention ordinance.

11. Update from Planning Director - Planning Director Michael Zehner summarized his monthly Planning Dept update for the Board.

12. Continuance to the June 3rd Board meeting: Consideration of a Major Site Plan for Gone Coastal Shopping Center, 7531 S Virginia Dare Trail, submitted by Jim and Stephanie Selckmann.

13. Continuance to the June 3rd Board meeting: Consideration of a Preliminary Plat for a Major Subdivision, known as Coastal Villas, for an approximately 9.86 acre property, zoned R-2, Medium Density Residential, owned by Nags Head Construction (Applicant), located on the west side of US 158, approximately 300 feet south of the intersection of W. Soundside Road and US 158 (Parcel # 006749004; PIN # 989108886987); the revised Preliminary Plat proposes to create 17 lots, along with an associated street and other required improvements.

14. From Mar 4th Board meeting - Beach Nourishment Coastal Engineering and Design Services presentation from Moffatt & Nichol – the remote presentation by Johnny Martin and Brian Joyner of Moffatt & Nichol was well received.

15. From Apr 15th Board meeting – The Board passed a motion to notify the Town's fireworks vendor to cancel this year's Fourth of July fireworks display – with a return to fireworks in 2021. Mayor Cahoon cast the NO vote.

16. From Apr 15th Board meeting - The Board unanimously passed a motion to suspend the recycling program to be revisited at a future date. It was confirmed with the Board that this is a suspension of the program and not an elimination of the program. Trash schedule was also discussed and Town Manager Ogburn is to make sure everyone is aware of the two sites (Town Hall and Public Works) available for people to take their recycling; property managers are to be notified of these changes.

17. Committee Reports – Comr. Fuller - Dare County Tourism Board (DCTB) – Grants Committee – the Tourism Board sent the grants back to the Grants Committee to be reduced; a lot of people won't get the grants they thought they were going to receive due to the COVID-19 impacts. Comr. Fuller said that he would like to tell the Grants Committee to take the fireworks funds that the town won't be using to more fully fund other grants.

Mayor Cahoon – Dare County Bulletin – Mayor Cahoon reported on a just-received email with the latest Bulletin announcing that visitors would be allowed entry into Dare County on 12:01 a.m. on Sat, May 16th.

Comr. Brinkley – Jennette's Pier Advisory Committee – Comr. Brinkley stated that he would be following up on an upcoming meeting via Zoom with the Jennette's Pier Advisory Committee.

Comr. Renée Cahoon – She thanked Mayor Cahoon for providing information concerning the COVID-19 updates from the Dare County Control Group in a very timely manner to Board members.

18. Board/Board/Committee appointments – The Board unanimously passed the following motions:
- To reappoint David Elder to another three-year term on the Planning Board.
- To reappoint Don Milbrath to another three-year term as an Alternate on the Board of Adjustment.
- To reappoint Jean Flanigan to another three-year term as an Alternate on the Personnel Grievance Panel.

- To reappoint Annette Ratzenberger and Rose Lay to additional terms on the Firemen's Relief Fund Board.

19. Attorney Leidy – New legislation re: regulation of remote participation in open meetings – during State of Emergencies – House Bill 1043/Senate Bill 704 – The legislation, signed by Governor Cooper on May 4th, becomes effective immediately; is only effective during statements of emergency declared by the Governor or Legislature; requires all votes to be by roll call vote; and requires the meeting notice to include that comments on public hearings will be allowed to be submitted up to 24 hours AFTER the public hearing.

20. Town Manger Ogburn – He summarized plans for summer 2020 for tents on the beach, lifeguards, and the enforcement of social distancing on the beach which he has coordinated with appropriate staff – he also noted that lifeguards will have some responsibility to communicate social distancing; in addition, emphasis will be placed on making sure lifeguards stay healthy.

21. Town Manager Ogburn – He requested a Closed Session to discuss personnel matters.

22. Comr. Renée Cahoon – She noted that since more people are now starting to come back to the area that it would be smart to continue to encourage everyone to wear their face masks. The Town should encourage this via its social media pages as should others such as the Chamber of Commerce.

23. Comr. Renée Cahoon – She thanked the community for their response in opposition to the letter that was being placed on out of town vehicle windshields, posted on Facebook, etc. with rude comments re: out of town property owners. She appreciated that people realized that the letter does not define the character of those living on the Outer Banks.

24. Mayor Pro Tem Siers – He stated that he has not received any emergency alerts from the County – his cellular phone company is Verizon - Mayor Cahoon said that he would follow up on this with the County.

25. Mayor Cahoon – The potential in the near future may be for restaurants to be allowed to re-open with minimal indoor dining and the ability to establish outdoor dining. It was Board consensus to agree to have Planning staff provide some information concerning flexibility in accommodating outdoor dining for restaurants to include food trucks at the June 3rd Board meeting.

26. Closed Session - The Board passed a motion to enter Closed Session to discuss personnel issues in accordance with GS 143-318.11(a)(6). The time was 12:43 p.m.

27. Open Session – The Board re-entered Open Session at 1:00 p.m.

28. Adjournment - The Board recessed to the May 20th mid-month meeting. The time was 1:03 p.m.

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.