



**- AGENDA -**

**Town of Nags Head Planning Board  
Tuesday, July 21st, 2020; 9:00 a.m.**

This Meeting will be open to the public; however, one or more members of the Board may participate remotely utilizing the ZOOM meeting platform. Members of the public will also be able to view the the meeting using the ZOOM platform or app on a 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

June 16, 2020 Planning Board Meeting

Documents:

[JUNE 16 2020 DRAFT MINUTES.PDF](#)

E. Action Items

1. Consideration Of A Text Amendment To The

Unified Development Ordinance to permit the "Real Estate Rental Management Facility" use within the C-2, General Commercial Zoning District.

Documents:

[REAL ESTATE RENTAL MANAGEMENT TEXT AMEND PB PACKET.PDF](#)

2. Consideration Of A Text Amendment To The Unified Development Ordinance to allow Furniture Stores as an allowable use as part of commercial mixed-use uses.

Documents:

[FURNITURE STORE MIXED USES TEXT AMEND PB PACKET.PDF](#)

- F. Report On Board Of Commissioners Actions  
July 1, 2020

Documents:

[JUL 1 2020 BOC ACTIONS.PDF](#)

- G. Town Updates - As Requested

- H. Discussion Items

1. Continued Discussion Of Legacy Establishments/Structures.

Documents:

[MEMO TO PB RE LEGACY ESTABLISHMENTS AND STRUCTURES\\_7-17-2020.PDF](#)

- I. Planning Board Members' Agenda

- J. Planning Board Chairman's Agenda

- K. Adjournment

**Town of Nags Head  
Planning Board  
June 16, 2020**

The Planning Board of the Town of Nags Head met on Tuesday June 16, 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, and the meeting were conducted with the members participating by simultaneous communication.

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, Holly White, Kate Jones and 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 via a roll call vote.

***Public Comment/Audience Response***

None

***Approval of Minutes***

Chair Vaughan asked for a motion to approve the minutes of the May 19, 2020 meeting. David Elder moved to approve as presented, Megan Lambert seconded, and the motion passed unanimously via roll call vote with Molly Harrison abstaining due to technical difficulties.

***Action Items***

*Reconsideration Of A Revised Preliminary Plat for a Major Subdivision, known as Coastal Villas, for an approximately 11.17 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 building lots, along with an associated street and other required improvements.*

This item was presented by Planning Director, Michael Zehner. This proposal was initially presented to the Planning Board in December, and then the Board of Commissioners for their meeting on January 8, 2020. Following a presentation by Staff and discussion amongst the Board of Commissioners, the Board passed a motion to table consideration of the Preliminary Plat until the Board of Commissioners March 2020 meeting and to ask that Staff facilitate a discussion between the developer and the Fourth Street property owners to have one curb cut, one right-of-way off of US 158 as a better solution for access. Prior to the March 4, 2020 Board of Commissioners meeting, the applicant requested a continuance to the Board's May 6, 2020 meeting, which was granted.

Staff worked as directed to facilitate discussions between the developer of the subject subdivision and the owner of 6 lots abutting the paper street known as Fourth Street. Based on these discussions, the applicant revised their plan and proposed to relocate access to the subdivision to US 158/S. Croatan Highway (eliminating the street/vehicular connection to Sea Bass Court) and extend the proposed street to allow for connectivity to the existing Fourth Street right-of-way; the revision of the plan was determined to require reconsideration by the Planning Board.

The revised preliminary plat was reviewed by the Planning Board at a meeting on April 21, 2020. Ultimately, the Board unanimously recommended approval of the Preliminary Plat as recommended by Staff but noted the Board's concerns related to safety due to the possibility of two additional curb cuts on 158, and a preference for the preliminary plat that had been previously presented to and recommended.

Mr. Zehner explained that during the Planning Board's review in April, member Gary Ferguson had inquired as to the circumstances leading to the creation of the property subject to the preliminary plat. Following the meeting, in coordination with the applicant and their representatives, as well as the Town Attorney, it was determined that a division in 2004 that was intended to establish a separate 1.03 acre parcel to be transferred to Dare County for use as a future well site, had not been properly subdivided. While a preliminary plat and associated waivers for this division had been approved by the Board of Commissioners, there is no record that a final plat for this subdivision was ever produced, approved, or recorded. Therefore, the applicant has revised the preliminary plat further to include this additional 1.03 acres and is proposing to re-establish the lot as part of the proposed subdivision; similar to the proposal in 2004, the preliminary plat requires waivers from the subdivision regulations.

Mr. Zehner proceeded to discuss these waivers for the Board noting that where the Planning Board finds that, due to the special circumstances of a particular plat, the provision of certain required improvements is not requisite in the interest of public health, safety and general welfare or is inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed subdivision, it may recommend and the Board of Commissioners may waive such requirements subject to appropriate conditions.

The proposed subdivision would create seventeen (17) building lots, located along a new street connecting directly to US 158/ S. Croatan Highway; additionally, the preliminary plat includes two open space areas, as well as the creation of Lot A-2, a 1.03 acre lot owned by Dare County with notes indicating the "lot shall be limited to a well production site for the Dare County reverse osmosis plant." The new street, identified as Coastal Breeze Way, would terminate at the southern property line, allowing future connectivity to an existing paper right-of-way identified as Fourth Street.

The proposed Preliminary Plat provides 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.

The current revised version of the preliminary plat provides for the multi-use path extension through the Mariners Way paper right-of-way to meander away from the southern property line. Staff believes this is responsive to considerations previously requested by a property owner along Sea Bass Court, while also considering potential impacts to Live Oak trees proposed to be retained within this area.

With the exception of the waivers noted above, it was determined by the UDO Administrator that the plan for the proposed development meets the requirements of the UDO.

A resident did inquire with Staff as to whether the proposed street name of Coastal Breeze Way was too close to the name of an existing street, W. Breeze Way. Pursuant to Section 10.66.10., Street Names and Signs, "All streets must be named so as not to duplicate the names of any existing streets in the Town. Such names shall be approved by the UDO Administrator and incorporated on the preliminary and final plats." Staff contacted the Postmaster for the Nags Head Post Office, who responded that they did not anticipate a problem; however, Staff has requested that the applicant provide some alternatives to alleviate any perceived concerns that the proposed name may lead to confusion.

The proposed preliminary plat was distributed for review by Town Staff. Returned comments noted that eventual construction drawings should include the planned location of water taps, further reference to the applicant's commitment to relocate the water line at the south of the subdivision to within the easement, the need to coordinate with Town Public Works on the installation of a waterline extension toward Sea Bass Court, and further requested that the applicant continue attempts to coordinate with NCDOT. On this last point, the applicant's engineer did communicate that they received "preliminary verbal confirmation from NCDOT...that they will allow access off of S. Croatan Hwy," and were expecting to receive written confirmation with any applicable restriction or requirements.

In their consideration of the most recently revised version of the preliminary plat, with respect to the necessary waivers, the Board should consider a specific recommendation on the waivers, based upon whether the Board finds that the waivers are appropriate, with or without conditions, due to the special circumstances of a particular plat, the provision of certain required improvements is not requisite in the interest of public health, safety and general welfare or is inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed subdivision.

Staff would recommend approval of the Preliminary Plat as revised and proposed, with the three conditions noted in Mr. Zehner's staff memorandum. With the exception of the requested waivers, Staff is of the opinion that the Preliminary Plat complies with all applicable requirements and that the applicant has addressed all issued comments; additionally, Staff is of the opinion that the Proposed Subdivision is consistent with applicable policy considerations. With respect to the requested waivers, Staff is of the opinion that the intended use of lot A-2 is a special circumstance, that, when taken into consideration with the existing easement, does not necessitate frontage in the interest of public health, safety and general welfare or preclude direct access to US 158 as inappropriate; given notes on the preliminary plat restricting the use of the lot and the existing easement, Staff does not recommend conditions specific to the requested waivers.

Cathleen Saunders with Quible & Associates addressed the Board. Ms. Saunders confirmed that they had received verbal confirmation from NC DOT that they will allow the single connection to US 158

and have indicated that they will provide this in writing. She did not know if there will be any restrictions on that connection to the bypass. Ms. Saunders noted that the developer is completely willing to have a right in, right out connection if that is what NC DOT deems is safe.

Ms. Saunders also noted that the developer is considering other street names to change from Coastal Breeze Way if that is what they are requested to do.

Ms. Saunders stated that generally other things have stayed the same since the last time the Board saw the proposal; Stormwater is being handled the same and they are providing for additional storage beyond the Town requirements. Ms. Saunders noted that they will be coordinating with Public Works with regards to water service.

There being no questions for the applicant, Chair Vaughan called for a discussion on the proposed plat.

Mr. Gwinn stated that he liked it, it looked fine to him. Ms. Harrison agreed with Mr. Gwinn. The Board did not have any comments or objections to the waivers or conditions.

There being no further discussion, Kristi Wright moved to recommend approval of the preliminary plat with Staff's three conditions and the required findings for the waivers. Meade Gwinn seconded the motion and the motion passed unanimously via roll call vote.

Planning Board member David Elder excused himself for the remainder of the meeting, the time was 10:12 a.m.

**Consideration of a Text Amendment to the Unified Development Ordinance to permit "Real Estate Rental Management Facility" within the C-2, General Commercial Zoning District.**

Deputy Planning Director Kelly Wyatt presented a proposed Text Amendment submitted by Cahoon and Kasten Architects, PC on behalf of Sumit Gupta of Legacy Home Services Inc. If adopted, this text amendment would amend the Unified Development Ordinance ("UDO") to permit the use "Real Estate Rental Management Facility" as a conditional use within the C-2, General Commercial Zoning District.

Ms. Wyatt noted that while it is important to remember that text amendments are not site-specific, this text amendment has been proposed with the intent to seek a conditional use permit for this use to be conducted in an existing structure located at 205 East Baltic Street (formerly His Dream Center) and situated within the C-2 Zoning District. Should the amendment be approved, the Conditional Use would be expected to come before the Planning Board for review and recommendation in July.

The "Real Estate Rental Management Facility" use was first established as a use permitted by-right within the C-3, Commercial Services Zoning District, in December 2006. At that time, a definition was established along with parking standards, and buffering requirements.

Ms. Wyatt reviewed for the Board the definition of "Real Estate Rental Management Facility" as well as the existing parking standard for this use.

Ms. Wyatt noted that when originally adopted into the code, the use of Real Estate Rental Management Facility was determined to be a "High Impact Use". High impact uses are particular uses of land, which considered as a whole because of their peculiar or operational and physical characteristics are expected to have an adverse effect on adjoining or adjacent properties.

The intent of the C-3, Commercial Services Zoning District, is to provide standards for higher intensity land uses that are not compatible in other areas of the Town. The commercial services district accommodates utilities, light industrial uses, warehousing, bulk storage, municipal facilities, studios (dance, martial arts, etc.), and commercial service buildings (20,000 square feet or less). It is also the intent of the C-3 District to regulate and buffer such uses so that their location will not be detrimental to adjacent uses, the environment, and sources of potable water.

The intent of the C-2, General Commercial Zoning District, where this use is being proposed as a conditional use, is to foster a thriving commercial business community with a variety of uses, activities and scales. This district represents areas that are anticipated to have future concentrations of uses that serve as destinations or hubs of activity for the Town and are appropriate for shopping centers or larger footprint retail stores.

The applicant, recognizing the different intents of the two districts, as well as their locations within the Town, suggested that this amendment be taken under consideration as a conditional use versus a permitted use, so as to provide the Planning Board and Board of Commissioners an opportunity to consider the placement of appropriate standards upon the use. The applicant has also provided a detailed outline of the requested text amendment including what is considered to be similar land uses currently permitted within the C-2, Zoning District as well as possible site and design standards to ensure compatibility with the C-2 District and adjoining land uses.

Ms. Wyatt noted that the Town's Comprehensive Plan has policies and actions related to the proposed text amendment and stated that those were included in her staff report.

In review of this text amendment application Staff would submit that while this use is compatible with the intent outlined for the C-3 Commercial Services, it is likely not compatible with the intent of the C-2, Commercial Services District. Additionally, Staff is of the opinion that the allowance of this use within the C-2 zoning district would be inconsistent with applicable policies contained in the Comprehensive Plan. Therefore, Staff recommends denial of the text amendment as proposed.

Ms. Wyatt noted that if the Planning Board was inclined to recommend adoption of the text amendment, Staff would recommend consideration be given to incorporating the suggested standards and criteria for this use within the C-2 zoning district. Ms. Wyatt reviewed these criteria for the Board.

Ms. Wyatt stated that she, as well as the architect, Mark Kasten and the applicant, Sumit Gupta were present and available to answer any questions for the Board.

Ms. Wyatt confirmed for Mr. Ferguson that there is currently only one of these types of uses within the Town and that one is located on Satterfield Landing in the C-3 zoning district.

Mr. Ferguson noted that while it would be nice to find a use for the proposed location (formerly His Dream Center) he wondered if there was vacant land currently available within the C-3 District that the applicant could use. Ms. Wyatt noted that there may be some vacant warehouse space and Mr. Zehner noted that at first glance there appeared to be one parcel that is currently undeveloped.

Chair Vaughan inquired as to the current use of the building. Ms. Wyatt stated that currently the building is being used as a Real Estate Rental Management Facility.

Mr. Zehner noted that staff is in the process of working with the property owner to resolve some issues and stated that this proposed amendment is a step in that process. The owner is fully aware

that there is a need to resolve several zoning, building and fire code issues with the use of the building currently.

Mr. Zehner reiterated that while this application relates to the use of that building, it should stand on its own as a text amendment and is not site-specific.

Mr. Gwinn inquired as to why Real Estate Management Facility was deemed to be a better fit for the C-3 Zoning District rather than the C-2. What made it more compatible?

Ms. Wyatt explained that based upon the warehouse storage nature of the use it met the intent of the C-3 District. The use was initially proposed by a property owner, it was not something initiated by the Town, but at that time it seemed to meet the intent of, and appropriate for the C-3, Commercial Services District.

Mr. Gwinn asked what about the use made it high impact. Ms. Wyatt explained that the use was deemed to be potentially disruptive to surrounding properties, such as the potential for large vehicles dropping things off and picking things up. There is a potential for significant activity happening in and out of a building.

Applicant Sumit Gupta of Legacy Home Services Inc. addressed the Board and thanked them for their consideration of his proposal.

Mr. Gupta explained that when they first bought the building their initial intent was to turn it into some type of performing arts center as it is close to Gallery Row. Mr. Gupta is a developer and he thought it might be a great activity for locals and tourists. Mr. Gupta felt that it was a great facility and the building had a lot of history. He met with the Town as well as several local organizations including the Dare County Arts Council and local theater groups but was unable to find a feasible economic model that worked. He told his partners that it was a good piece of property and they could either find another use for the building or they could re-develop it.

Mr. Gupta really does not want to redevelop the property or demo the building. He has a construction company and rental cottages. They have grown the maintenance side of their business and have a few people working out of the building. These same employees have been maintaining the building and cleaning up around it. The building is in pretty good shape and they want to make sure it's kept that way. Mr. Gupta stated that is a large (17,000 SF) building and they have different uses for it but they don't need a lot of employees working out of the building. They plan to store some building materials and accept some deliveries.

Mr. Gupta has not had any neighbors complaining; rather several neighbors have come over to thank them for keeping up the building and maintaining it.

Mr. Gupta understands that the amendment can't be site-specific, that is why he worked with his architect to add language to try to limit the number of properties that might be affected and still allows him to have some basic use of the property.

Mr. Gupta noted that there are a lot of uses in the C-2 which he believes to be higher impact, including the Performing Arts Center he was initially considering.

Mr. Gupta is trying to get some use out of the building and hoping that in a few years he is able to come up with another use to keep the building as is.

Mark Kasten was next to address the Board and delved further into the definition of Rental Management Facility and why they feel that that it would be compatible with other uses currently allowed in the C-2 District.

Mr. Kasten noted that Real Estate Management occurs during normal business hours. There are not any activities early or later, which would be bothersome to the neighbors. There are also not any processes which take place inside or outside of the building, which would be bothersome to neighbors. Nothing occurs that produces odors. There are no noise producing operations, nor fabricating or manufacturing of any kind. The activities which do occur are the arrival and departure of employees at normal business times (the parking standard envisions very few employees and this is true to the applicant); the arrival and departure of service personnel or vendors throughout the day; receiving shipments of furniture and appliances, fixtures and finished materials like rolled carpet or paint.

Mr. Kasten does not believe that this use would be equal or higher intensity than other uses currently permitted in the C-2 District such as restaurants, grocery stores, convenience stores, auto repair shops and car washes. All of those uses generate more traffic, more noise and more impact than a real estate management business.

Mr. Kasten believes that the use is also consistent with land use policies which encourage uses that serve the needs of both year-round and seasonal residents. Mr. Kasten stated that the community was built on tourism and weekly cottage rentals which a real estate management uses supports.

In addition, Mr. Kasten stated that the land use policies discourage high intensity land uses that produce significant noise, light and heavy vehicular traffic, noxious fumes or poor air quality or encourage unsafe behavior or require large amounts of land for heavy industrial uses. Mr. Kasten noted that the proposed use does none of these things and further stated that there are actually already permitted uses that produce more heavy traffic.

Mr. Kasten pointed out that there are already uses in the C-3 that are permitted in other parts of the town so the presence of the use in C-3 is not an automatic prohibition in C-2.

Mr. Kasten further noted that land use policies encourage the development and promotion of a sustainable economy that supports a high quality of life for residents and visitors. The applicants believe that this use supports the economy and do not see how it would compromise natural and cultural resources.

Finally, Mr. Kasten noted that the land use policies encourage the reuse of existing structure and they believe the Town would benefit from the preservation of the building for some future higher and better use. The applicant had considered an arts facility as previously mentioned but so far has not been able to make it viable. Until another, better use comes along, a real estate rental management facility would work with minimal intervention.

Mr. Kasten stated that the applicant is amenable to all the standards and criteria suggested by Staff to ensure the low impact of this proposed use and asked that the Board approval their request.

Mr. Gupta confirmed for Mr. Gwinn that currently they have furniture stored there and some left over construction material such as doors and windows. It is used for temporary storage, so items come and go. While he couldn't speak to any increase fire hazard, he did note that there are less items there that were there being stored by the previous tenant.

Mr. Kasten noted that he did not feel that anything stored there would be any more of a fire hazard than anything else allowed in the C-2 District.

Mr. Zehner added that while this use was not site-specific, he reminded the Board that any use would be subject to review under building and fire codes.

Ms. Wyatt confirmed for Ms. Harrison that the C-2 encompasses the majority of properties between the highways and throughout town it goes through Whalebone and crosses over the Causeway. It is a pretty significant area. Mr. Zehner presented the zoning map so that the Board members could get an idea of the size of the district.

Ms. Wyatt confirmed that the Board of Adjustment cannot issue variances related to uses, only on dimensional requirements such as lot coverage and setbacks.

Mr. Gupta confirmed for Chair Vaughan that until recently a lot of their maintenance had been outsourced. They run a management company and have started hiring employees to handle their maintenance needs partly with the idea of justifying the building, but it made sense both ways. They were also storing furniture and materials across the bridge in Currituck, but it made more sense to store them closer. Mr. Gupta also noted that it made sense to have people working in the building that could also maintain it and keep an eye on it.

Mr. Gupta confirmed for Mr. Gwinn that this use would support their rental management business and noted that their rental houses are spread out throughout the Outer Banks with about 15 or 18 houses in Nags Head. Mr. Gupta believes Nags Head to be a good central point to service all his properties.

Mr. Gupta confirmed for Ms. Lambert that there might be an uptick in operations as they grow that side of the business; maybe an increase in staff but it is a very large building that can accommodate the maintenance operations of their business.

Ms. Lambert expressed concern that while the neighboring properties may be ok now, things might change as the business grows.

Ms. Harrison agreed stating they would be affecting a lot of properties with this decision; if it was just the one specific property and this one company which seems well run that would be great, but they are talking about a lot of properties and a lot of potential businesses doing similar things within the same parameters.

Mr. Gupta noted that he understood Ms. Harrison's point and stated they would be open to any further restrictions or conditions that could minimize the impacts town wide. Mr. Gupta also reminded the Board that they are proposing this to be a conditional use so it would need Board approval.

Mr. Zehner confirmed for the Board that the applicants had filed a conditional use permit application that is contingent on the text amendment being adopted.

Mr. Zehner explained that the conditional use process allows the Board to gauge the impacts of a particular use based on its location and put additional conditions that they may want to impose.

Mr. Ferguson stated that he had looked at the only other rental management business in the Town and believes the use to be light industrial. The applicants confirmed that they would be using the building for warehousing which he does not believe to be compatible with the other uses currently allowed in the C-2 District. Even if it was through the conditional use process, Mr. Ferguson does not believe that it would meet the condition of not having a detrimental effect on the adjacent property owner's land values. For those reasons, Mr. Ferguson would not support approving the text amendment and believes the use should stay in the C-3 District.

Mr. Ferguson further stated that while the use is a great fit for the building it's just in the wrong location.

Chair Vaughan agreed with Mr. Ferguson, noting that while it is a good building, and appreciates the applicant's interest in preserving it, she would not want to see the use all over the C-2 District.

Mr. Gwinn agreed as well noting that his concern is that it's not limited to the current activities and so there may be some additional activities that would occur down the road as needed if this were to be approved. While he understands the applicant's rationale behind using a building that they bought and that may be consistent with their business progression, Mr. Gwinn does not believe that it would enhance or benefit the community around it and might actually have a negative impact on surrounding property values.

After a brief discussion about legacy buildings and how this property was a good example of what might be considered a legacy building Mead Gwinn moved to recommend denial of the text amendment as presented. Gary Ferguson seconded the motion and the motion passed unanimously by roll call vote.

### ***Report on Board of Commissioners Actions***

Planning Director Michael Zehner gave a report on the Actions from the Board of Commissioner's June 3<sup>rd</sup> Meeting. Of note, the Board adopted the ordinance amendment to allow "Tutoring Facility/Learning Center" as a permitted use within the C-2 District as presented. The Board also adopted the proposed amendment to the UDO pertaining to temporary uses or temporary alteration of uses related to declared emergencies presented; in addition, the Board waived associated fees for the next 45 days. The Board modified the Flood Damage Prevention Ordinance by removing the 25% recommended limit on lateral additions. The Board then adopted the Flood Damage Prevention Ordinance with the Local Elevation Standard (LES) modified from 10' to 9' for areas west of NC 12 and SR 1243. Mr. Zehner also noted that there was discussion about the Town's recycling program and based on the Planning Board's previous discussion he had sent out a request for volunteers for a committee that will be working on recycling within the town.

### ***Town Updates***

None

### ***Discussion Items***

Chair Vaughan and the Board briefly discussed the possibility of meeting in person at their next meeting and agreed that the Zoom platform is cumbersome and slow when it comes to the discussion items and tends to lengthen the meeting times. The Board agreed to play it by ear based on the latest virus information but will try to aim to meet in person for their July meeting.

The Board also agreed to hear the next Discussion Item related to the Hazard Mitigation Plan as it is time sensitive, but then discuss whether to table some of the other discussion items.

### ***Discuss and Consider Recommendation on Hazard Mitigation Plan***

Principal Planner Holly White explained that Dare and Currituck Counties, and the towns of Manteo, Nags Head, Kitty Hawk, Kill Devil Hills, Southern Shores, and Duck, joined efforts on updating their Hazard Mitigation Plans. This effort has been referred to as the *Outer Banks Regional Hazard*

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*Mitigation Plan.* The Town's previous Hazard Mitigation Plan which was part of the *Albemarle Regional Hazard Mitigation Plan* ("Albemarle RHMP") will expire in June 2020.

While good practice, especially given the Town's susceptibility to hazards, local governments are required to prepare and update hazard mitigation plans in order to be eligible for FEMA Disaster Assistance and Mitigation Grants. Ms. White explained that the Hazard Mitigation Plan is also an important component of the Town's participation in the Community Rating System ("CRS") program. Through participation in the CRS program, all Town property owners receive a 20% discount on flood insurance.

While Dare County has acted as the lead in this process, Planning Staff has been responsible for reviewing and providing feedback on the draft Plan, as well as vetting any information that was needed specifically for the Town.

A Planning Team was developed to assist in gaining community feedback and participation as well as meet the criteria of the CRS program for Hazard Mitigation Plans. Nags Head's team members included staff members as well as two citizen representatives, Meade Gwinn and Megan Lambert.

Ms. White noted that the draft Hazard Mitigation Plan was made available to the public in January 2020 for feedback and was shared with the Planning Board. Following this, a final draft plan was produced and sent to the State for review. After review by the State, the draft plan was submitted to FEMA for review.

FEMA approved the *Outer Banks Regional Hazard Mitigation Plan* as of June 10, 2020. Formal notification from FEMA will be sent upon approval of the plan by all the jurisdictions involved. A draft resolution of adoption was forwarded to the Planning Board as part of the Staff memorandum.

Staff would recommend that Planning Board recommend adoption of the *Outer Banks Regional Hazard Mitigation Plan* to the Board of Commissioners.

Ms. White confirmed for Mr. Ferguson that currently the Town holds a CRS rating of 6, with a score of one (1) being the best.

Mr. Gwinn inquired how Nags Head's rating compared to other localities. Ms. White stated she believes that city of Charlotte has a rating of 5, which is the lowest in the state. Ms. White stated she would email the Planning Board if they wanted to know more about the rating.

Ms. White confirmed for Mr. Ferguson that the Town is still participating in the building code effectiveness grading schedule.

Mr. Zehner stated that a few months prior he had shared the latest report as part of his Director's Report and stated that the Town had scored higher than other municipalities, not just on the Outer Banks, but higher than the average for the entire state. Mr. Zehner explained that these scores relate back to the CRS rating.

Chair Vaughan thanked Ms. White and the rest of the team for their work on this project. Chair Vaughan then moved to recommend approval of the plan as presented. Mr. Ferguson seconded the motion and it passed unanimously via roll call vote.

Continued Discussion of Regulation of Events within Residential Dwelling Units

Mr. Zehner briefly reviewed this item for the Board noting that staff did not believe that there to be any benefit to considering it further during the middle of the. If it's something that the Board would like to pursue it may make sense (given the delays they've had) to just wait until sometime in September or October to revisit the item.

After a brief discussion the Board agreed to table the item noting that there will probably be limited events due to the pandemic. The Board can revisit at a later date and have something in place prior to the 2021 season.

Continued Discussion of Large Occupancy Homes

Mr. Zehner briefly reviewed this item noting that this discussion was generated by what the Town of Kill Devil Hills was doing. Mr. Zehner thought that Ms. Wyatt had done a great job of explaining in her staff report why what they (KDH) are doing is not necessarily an apples to apples comparison. Staff is of the opinion that what the Town of Nags Head currently has in place already affords the protections that they (KDH) were looking to institute. Staff's recommendation is that no further action be taken. Mr. Zehner also suggested that if there was further interest, the Board could look to program it into the Work Plan, whether that's in the next fiscal year or the one to follow.

After a brief discussion the Board agreed that no further action was necessary. Mr. Zehner will report this back to the Commissioners.

Continued Discussion of Residential Stormwater Regulations

Mr. Zehner briefly introduced the item and stated that Engineering Technician Kate Jones was also present to answer any questions for the Board. Ms. Jones manages the administration of the Residential Stormwater Ordinance. Ms. Jones is aware of the ongoing conversations and has heard some of the same concerns.

Mr. Zehner explained that the Board had asked Staff to focus on educational opportunities, other resource opportunities as well as incentives. Staff also received additional feedback from the Board of Commissioners at their last workshop. Based on this feedback Staff came up with recommendations that they could institute, and which were detailed in their staff report. Staff also provided the Board with a list of projects permitted under the Ordinance so that the Board could see examples of the results of the regulations.

Chair Vaughan noted what immediately came to her attention as she was doing her site visits was the amount of fill placed on the properties.

Ms. Jones confirmed that part of that is the Dare County Environmental Health Septic Requirements which is often a starting place for the amount of fill placed on a lot.

Ms. Jones reminded the Board that fill is no longer a trigger for the stormwater regulations. Ms. Jones noted that (non septic) fill is also partly regulated by the Flood Ordinance.

Chair Vaughan stated that when there is so much fill it is hard to imagine that the control measures can be effective. Chair Vaughan wondered if there could be incentives to control the amount of fill on a lot.

Ms. Lambert agreed, noting that anything that could be done to minimize fill would help with flooding. She is in an older property herself, one that floods easily due to newer properties being

built up higher than hers was. Ms. Lambert noted that many "legacy" properties have the same flooding concerns.

Ms. Jones confirmed that the concern that had been brought up about the rip rap/stone that was put in place had nothing to do with the Town's Stormwater Regulations which do not include town right-of-ways. That stone was placed to stabilize the area around culverts (which run underneath the driveway), when water is running out of the pipe. Ms. Jones did note that sometimes stone may be used to keep water from running down a driveway, but it is just one of several control measures.

Chair Vaughan liked the idea of focusing on education and especially using live examples. She also noted that she thought it was early in the ordinance to go trying to "reinvent the wheel".

Chair Vaughan inquired if Staff had heard concerns that the requirements are onerous, expensive and time consuming.

Ms. Jones stated that it depends; the majority of people understand the need for it and are willing to do it. Ms. Jones agreed that cost can be a factor which is why financial incentives are part of Staff's recommendations.

Staff noted, and Chair Vaughan agreed that you don't hear concerns from the ones where the measures are working. Staff agreed that maybe having testimonials from people that went through it where the measures are working could be part of the education piece.

Ms. Lambert agreed noting that she remembered comments from the public who stated that while it was a lot of work, they would gladly go through the process again for the same positive outcome.

Chair Vaughan noted that while it may be a lot of work, the public should be made aware that staff is available to help them through the process.

Mr. Zehner noted that some of the concerns rise from the unpredictability of the process, some people are not familiar with this and don't know what to expect in terms of time and cost. As part of their recommendations Staff is suggesting making options more regular and predictable across properties. Staff also discussed the state standard that the Town uses for calculations and while it's important, they could make that a little simpler for the user.

Mr. Gwinn stated that education is critical both to the contractors prior to a lot being developed and then for property owners after a lot has been developed.

Ms. Jones agreed noting that Staff's recommendations break it up between pre and post development and emphasize low impact development.

The Board agreed that education, incentives, common sense (such as looking at each lot individually) and adding flexibility to the ordinance where it is warranted were key points and in general were supportive of staff's recommended actions and activities.

#### Continued Discussion of Legacy Establishments/Structures

Mr. Zehner reminded the Board that this issue is less pressing than it was previously. Mr. Zehner stated that at the last meeting, Mr. Ferguson brought up a good point about nonconformities. This encouraged staff to think about it in a different way and determine that having an overlay district is probably more complicated that it needs to be.

Instead, staff has revisited a use-based approach similar to the treatment of nonconforming cottage courts. Regulations could be developed for the treatment of specific nonconforming uses (i.e. retail,

restaurants, hotels, etc.) 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.

Staff does not think it's the end all, be all in terms of protecting legacy structures, or even legacy uses because it really focuses on the nonconforming nature of a use and how limiting existing regulations are on nonconforming uses. Mr. Zehner also pointed out that not every legacy business is going to be a nonconforming use and not every nonconforming use is going to be a legacy establishment.

Staff is suggesting that the initial threshold would be a retail, restaurant, or hotel that was nonconforming and commenced prior to 1981. Mr. Zehner noted that while it is not necessarily an arbitrary threshold, it may not be inclusive of all of the establishments, and as such staff would like to identify all of the instances where they think this would apply.

Mr. Zehner explained they could create a mechanism so that if you have a nonconforming use you can seek a conditional use permit to modify that use in ways that you cannot currently because of the applicable provisions in the code. Mr. Zehner noted that currently, if you have a nonconforming use and it's in a nonconforming structure, you're limited even further in terms of what you can do and what type of repairs you can make to that structure.

Mr. Zehner pointed out that there are oceanfront hotels that have been there for years, that are a nonconforming use. Some of the structures may be conforming, some of the structures may be nonconforming. Under this provision they would have the ability to seek a conditional use permit to evolve that use where they couldn't do that today.

Staff believes this might be an easy way to address the issue and if this is something the board sees merit in staff can come back at the next meeting with an official text amendment to enact something like this and then the Board can decide if they want to recommend that to the Board of Commissioners.

Mr. Ferguson would like Staff to try to identify how many legacy structures are in Town and where they are located.

Mr. Gwinn asked if Staff could also try to identify nonconforming uses and where are they in the Town.

After some further discussion, staff agreed to compile a list of properties where this might apply to.

Planning Board Members' Agenda

None

Planning Board Chairman's Agenda

None

**Adjournment**

A motion to adjourn was made by Molly Harrison. The time was 12:02 PM.

Respectfully submitted,

Lily Campos Nieberding



# MEMORANDUM

## Town of Nags Head

### Planning & Development Department

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To: Planning Board

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

Date: July 16, 2020

Subject: Consideration of a text amendment to allow “Real Estate Rental Management Facility” as a Conditional Use within the C-2, General Commercial Zoning District.

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#### OVERVIEW

Cahoon and Kasten Architects, PC has resubmitted the attached text amendment application on behalf of Sumit Gupta of Legacy Home Services Inc.; following discussion and the recommendation issued at the June 16, 2020 Planning Board meeting, the applicant elected to withdraw the proposed text amendment, and subsequently submit a slightly revised proposal in conjunction with a separate proposed text amendment. If adopted, this text amendment would amend the Unified Development Ordinance (“UDO”) to permit the use “Real Estate Rental Management Facility” as a conditional use within the C-2, General Commercial Zoning District. While it is important to remember that text amendments are not site specific, this text amendment has been proposed with the intent to seek a conditional use permit for this use to be conducted in an existing structure located at 205 East Baltic Street (His Dream Center) and situated within the C-2, Commercial Services Zoning District; this application has been filed and is expected to come before the Planning Board for review and recommendation following resolution on the proposed text amendment.

The applicant has provided a detailed outline of the requested text amendment within the attached application, including what is considered to be similar land uses currently permitted within the C-2, Zoning District, as well as possible site and design standards to ensure compatibility with the C-2 District and adjoining land uses. These site and design standards include that the Real Estate Rental Management Facility use:

- Shall not be located upon a lot having frontage on NC 12/Virginia Dare Trail or US Highway 158.
- Shall be located upon a lot having a minimum area of one (1) acre.
- Whether as a new use or a change of use, Real Estate Rental Management Facility must adhere to the buffering requirements of 10.93, Landscaping, Buffering, and Vegetation Preservation and specifically Section 10.93.3.2, Commercial Transitional Protective Yards and 10.93.3.3, High Impact Uses.

*Consideration of a text amendment to allow “Real Estate Rental Management Facility” as a Conditional Use within the C-2, General Commercial Zoning District.*

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- Shall adhere to hours of operation consistent with Article III of the Town Code, Noise Ordinance such that no activity shall occur between the hours of 11:00pm and 7:00am.
- Shall be prohibited from the outdoor storage of materials or equipment.
- Shall have freestanding signage limited to 16 square feet and there shall be no allowance for wall signage.
- There shall be no linen storage or cleaner check-in associated with this use in the C-2, General Commercial Zoning District.
- The use shall adhere to low-level of activity lighting standards as referenced in Section 10.37, Specific Lighting Application Standards.

**BACKGROUND**

The “Real Estate Rental Management Facility” use was first established as a use permitted by-right within the C-3, Commercial Services Zoning District, in December 2006. At that time, a definition was established, along with a parking standard and buffering requirements. The definition of “Real Estate Rental Management Facility” is as follows:

*Real estate rental management facility means a building containing those uses, including but not limited to, administrative offices and warehouse/storage areas for the convenience, maintenance, housekeeping and service of rental homes and properties.*

The existing parking standard for this use is as follows:

Service	Real Estate Rental Management Facility	One parking space for each 200 square feet of office space plus 1 space for each employee affiliated with any real estate rental management facility with a minimum of 2 spaces.
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Additionally, when originally adopted into the code, the use of Real Estate Rental Management Facility was determined to be a “High Impact Use”. High impact uses are particular uses of land, which considered as a whole because of their peculiar or operational and physical characteristics are expected to have an adverse effect on adjoining or adjacent properties.

The intent of the C-3, Commercial Services Zoning District, is to provide standards for higher intensity land uses that are not compatible in other areas of the Town. The commercial services district accommodates utilities, light industrial uses, warehousing, bulk storage, municipal facilities, studios (dance, martial arts, etc.), and commercial service buildings (20,000 square feet or less). It is also the intent of the C-3 District to regulate and buffer such uses so that their location will not be detrimental to adjacent uses, the environment, and sources of potable water. For this reason, in 2006, this use was approved as a permitted use within the C-3 Commercial Services District.

The intent of the C-2, General Commercial Zoning District, where this use is being proposed as a conditional use, is to foster a thriving commercial business community with a variety of uses, activities and scales. This District represents areas that are anticipated to have future concentrations of uses that serve as destinations or hubs of activity for the Town and are appropriate for shopping centers or larger footprint retail stores. The applicant, recognizing the different intents of the two districts, as well as their locations within the Town, has suggested that this amendment be taken under consideration as a conditional use versus a permitted use, so as to provide the Planning Board and Board of Commissioners an opportunity to consider the placement of appropriate standards upon the use.

## **POLICY CONSIDERATIONS**

The Town’s Comprehensive Plan includes the following policies and actions related to the requested text amendment:

LU-9; pg. 3-20 – 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.

LU-10; pg. 3-20 – Discourage high intensity land uses that produce significant noise, light, heavy vehicle traffic, noxious fumes or poor air quality, are unsightly, encourage unsafe behavior, or require large amounts of land for heavy industrial uses, processing, or storage of materials or equipment.

LU-10a: Evaluate land uses specified in each zoning district and further clarify which uses are appropriate based on the intent of each district, their overall compatibility with current land uses, and desired future development patterns.

LU-10b: Maintain the current boundaries of the C-3 District and do not expand these uses to other parts of the town.

EC-1; pg. 3-117 – Develop and promote a sustainable economy that supports a high quality of life for residents and visitors without compromising the integrity of natural and cultural resources and a sense of place.

EC-3; pg. 3-117 – Meet the infrastructure and service needs of the community at appropriate levels as the community continues to grow.

EC-5; pg. 3-122 – 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-8; pg. 3-123 – Enhance economic health and increase employment opportunities through business retention and expansion.

## STAFF RECOMMENDATION

In review of this text amendment application Staff would submit that while this use is compatible with the intent outlined for the C-3 Commercial Services, it is likely not compatible with the intent of the C-2, Commercial Services District. Additionally, Staff is of the opinion that the allowance of this use within the C-2 zoning district would be inconsistent with several policies contained in the Comprehensive Plan. Therefore, Staff recommends denial of the text amendment. If the Planning Board is inclined to recommend adoption of the text amendment, Staff would recommend consideration be given to incorporating the standards and criteria set forth by the applicant for the use within the C-2 zoning district.

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

### *3.5.3. Action by the Planning Board.*

*3.5.3.1. Every proposed amendment, UDO text amendment or zoning map amendment, shall be referred to the Planning Board for its recommendation and report. The Board of Commissioners is not bound by the recommendations, if any, of the Planning Board.*

*3.5.3.2. Prior to the consideration by the Board of Commissioners of a proposed UDO text amendment or zoning map amendment, the Planning Board shall advise and comment on whether the proposed amendment is consistent with the Comprehensive Plan. The Planning Board shall provide a written recommendation, certified by the UDO Administrator, to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the Comprehensive Plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners.*

*3.5.3.3. Members of the Planning Board shall not vote on recommendations regarding any UDO text amendment or zoning map amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.*

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

### *3.5.4. Action by the Board of Commissioners.*

*Action upon an UDO text amendment or zoning map amendment, including the scheduling of a public hearing, will be at the discretion of the Board of Commissioners.*

*3.5.4.1. Before an item is placed on the consent agenda to schedule a public hearing, the Planning Board's recommendation on each*

*Consideration of a text amendment to allow “Real Estate Rental Management Facility” as a Conditional Use within the C-2, General Commercial Zoning District.*

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*proposed amendment must be received by the Board of Commissioners. If no recommendation is received from the Planning Board within 30 days from the date when submitted to the Planning Board, the petitioner may take the proposal to the Board of Commissioners without a recommendation from the Planning Board. However, the Planning Board may request the Board of Commissioners to delay final action on the amendment until such time as the Planning Board can present its recommendations. No such limitations shall apply to applications or requests submitted by Town staff or any Town Board.*

*3.5.4.2. After receiving a recommendation from the Planning Board on a proposed amendment, the Board of Commissioners may proceed to vote on the proposed ordinance, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.*

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

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

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

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

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

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

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

*Consideration of a text amendment to allow “Real Estate Rental Management Facility” as a Conditional Use within the C-2, General Commercial Zoning District.*

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*request or application for amendment to the Comprehensive Plan.*

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

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

*3.5.4.6. In deciding whether to adopt a proposed amendment to this UDO, the central issue before the Board of Commissioners is whether the proposed amendment advances the public health, safety, or welfare. When considering proposed map amendments:*

*3.5.4.6.1. The Board of Commissioners shall consider the entire range of permitted uses in the requested classification.*

**Attachments:**

1. Draft Ordinance
2. Application from Cahoon and Kasten Architects, PC.

**(DRAFT)**  
**AN ORDINANCE AMENDING THE CODE OF ORDINANCES**  
**OF THE TOWN OF NAGS HEAD, NORTH CAROLINA PERTAINING TO “REAL ESTATE**  
**RENTAL MANAGEMENT FACILITY” WITHIN THE C-2 ZONING DISTRICT.**

**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 submitted requesting consideration be given to permitting the use “Real Estate Rental Management Facility” as a conditional use 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 direct new commercial growth into neighborhood commercial nodes, activity centers, or areas currently zoned for commercial development with emphasis on reuse of existing structures.

**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:

Use Category/Class	Use Type	Residential Districts			Commercial Districts				
		R-1	R-2	R-3	CR	C-1*	C-2	C-3	C-4
Service	Real Estate Rental Management Facility						<u>CS</u>	P	

PART II. That **Section 7.22A, Real Estate Rental Management Facility**, be added as follows:

Section 7.22A – Real Estate Rental Management Facility.

Real Estate Rental Management Facilities are permitted in accordance with Section 6.6, Table of Uses and Activities. When located within the C-2 zoning district, subject to a Conditional Use Permit, the following additional requirements and conditions shall be met:

Consideration of a text amendment to allow "Real Estate Rental Management Facility" as a Conditional Use within the C-2, General Commercial Zoning District.

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7.22A.1 Shall not be located upon any lot having frontage on NC 12, S. Virginia Dare Trail or US Highway 158.

7.22A.2 Shall not be located upon a lot with a total lot area less than one (1) acre.

7.22A.3 Whether as a new use or a change of use, shall adhere to the buffering requirements of 10.93, Landscaping, Buffering and Vegetation Preservation and specifically Section 10.93.3.2, Commercial Transitional Protective Yards and 10.93.3.3, High Impact Uses.

7.22A.4 Shall adhere to hours of operation consistent with Article III of the Town Code, Noise Ordinance such that no activity shall occur between the hours of 11:00pm and 7:00am.

7.22A.5 Outdoor storage of materials or equipment shall be prohibited.

7.22A.6 Given the warehouse type nature of this facility, freestanding and wall signage shall be minimized. Freestanding signage shall not exceed sixteen (16) square feet in area and there shall be no allowance for wall signage.

7.22A.7 There shall be no linen storage or cleaner check-in associated with this use in the C-2, General Commercial Zoning District.

7.22A.8 Shall adhere to the low-level of activity lighting standards set forth in Section 10.37, Specific Lighting Application Standards.

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 upon the date of adoption by the Board of Commissioners.

\_\_\_\_\_  
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

ZONING AMENDMENT APPLICATION  
TOWN OF NAGS HEAD, NORTH CAROLINA

Applicant Ben Cahoon as Agent for Summit Gupta

Mailing address 118 W. Woodhill Drive, Nags Head, NC 27959

Explanation of request

Zoning Ordinance - Section(s) section 6.6 and Article 7.  
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

To add "Real Estate Rental Management Facility" as a conditional use with Supplemental Design Standards (CS) in the C-2 Zoning District. Supplemental standards shall include:

- No frontage on NC 12 or US 158
- Min. lot size (1) acre.
- Comply with Buffer standards 10.93.3.2 and 10.93.3.3
- No activity between 9:00 pm and 7:00 am
- outdoor storage prohibited.
- Freestanding signage limited to 16sf and no wall signage
- No linen storage or cleaner check in.

Reason for request

A "Real Estate Rental Management Facility" potentially fits in the C-2 General Commercial District, but not without supplemental standards to make it more compatible with the established development pattern.

Ben Cahoon /   
Applicant

7/13/20  
Date

**MEMORANDUM**

To: Michael Zehner  
Planning Director  
Town of Nags Head

From: Ben Cahoon, AIA  
Cahoon and Kasten Architects, PC

Date: June 10, 2020

Re: Legacy Home Services  
Proposed Real estate rental management facility in the C-2 Zoning District  
205 East Baltic Street

Michael:

As you are aware the owner of the property at 205 East Baltic Street wishes to establish and operate there a "Real estate rental management facility" as defined by the Unified Development Ordinance. That definition is:

**Real estate rental management facility** means a building containing those uses, including but not limited to, administrative offices and warehouse/storage areas for the convenience, maintenance, housekeeping and service of rental homes and properties.

This is a Change of Use as defined in Section 1.4.3. As further outlined in this memo the owner wishes to obtain a Conditional Use Permit for this use.

**1.4.3.** Except as hereinafter provided, no building or structure shall be erected, moved, altered, or extended, and no land, building, or structure or part thereof shall be occupied or used unless in conformity with the regulations specified for the district in which it is located. Additionally, no use of land shall be initiated or changed and no building or other structure shall be erected, moved, added to or structurally altered without having either a conditional use permit approved by the Board of Commissioners as provided for under Section 3.8, Conditional Use Permits, or a zoning permit approved and issued by the UDO Administrator.

This property is located in the C-2 Zoning District as indicated by the black square on the map below.



However, in the Table of Uses and Activities in Section 6.6 a “Real Estate Rental Management Facility” is not permitted in the C-2 District.

Use Category/Class	Use Type	Residential Districts			Commercial Districts				
		R-1	R-2	R-3	CR	C-1*	C-2	C-3	C-4
3 Service	Car Washes (Automated and Self-Service)						CS		
3 Service	Carpet Sales and Installation							P	
3 Service	Child Care Facility, Child Care Center					CS	CS		
3 Service	Dry Cleaners and Laundromats (Pickup only)					P	P		
3 Service	Fire Safety Equipment Sales and Service							P	
3 Service	Food Bank						CS		
3 Service	Fueling Station						CS		
3 Service	Funeral Home						P		
3 Service	Group Fitness- Aerobics/Dance/Karate/Yoga					P	P	P	P
3 Service	Hair Salon					P	P		P
3 Service	Indoor Fitness/Gymnasium					P	P	P	P
3 Service	Indoor Public Assembly Facility				C	P	P		P
3 Service	Locksmiths						P	P	
3 Service	Massage and Bodywork Therapy					PS	PS		PS
3 Service	Metaphysical Wellness Services						CS		
3 Service	Parking Lots					P	P		
3 Service	Real Estate Rental Management Facility								P

Therefore as an agent of the owner and at their direction, Cahoon and Kasten Architects hereby makes application, in accordance with Section 3.5.1, to add (by zoning text amendment) “Real Estate Rental Management Facility” to Conditional Uses in the C-2 Zoning District.

**3.5.1. Procedure.** The Board of Commissioners may by ordinance amend, supplement, change, modify or repeal the regulations and maps of this UDO after public notice and hearing and compliance with any other applicable rules prescribed in this UDO. Such amendment may be initiated by motion of the Board of Commissioners, by motion of the Planning Board, or by application by any person within the zoning jurisdiction of the Town. A person submitting application for a zoning map amendment must be the owner, or an agent of the owner with the owner’s written consent, of the property which is the subject of the proposed zoning map amendment. A notice of the hearing shall be given in accordance with Section 3.4, Notice of Hearing. As used in this section, “comprehensive plan” includes a unified development ordinance and any other officially adopted plan that is applicable. **3.5.2. Action by Applicant.** The following action shall be taken by the applicant: **3.5.2.1.** For any proposed text amendment, the application shall provide the name(s) and address(es) of the applicant(s) and the actual text of the proposed amendment in a form such that one can determine what provisions of this UDO will be changed and how they will be changed by the amendment.

The name and address of the Applicant are: Sumit Gupta  
 Legacy Home Services, Inc.  
 205 East Baltic Street  
 Nags Head, NC 27959

The actual text of the proposed amendment is to insert the letter “C” into the Use table as shown below:

**SECTION 6.6 TABLE OF USES AND ACTIVITIES.**

P - Permitted Use C - Conditional Use S - Supplemental Regulations

Use Category/Class	Use Type	Residential Districts			Commercial Districts				
		R-1	R-2	R-3	CR	C-1*	C-2	C-3	C-4
3 Service	Car Washes (Automated and Self-Service)						CS		
3 Service	Carpet Sales and Installation							P	
3 Service	Child Care Facility, Child Care Center					CS	CS		
3 Service	Dry Cleaners and Laundromats (Pickup only)					P	P		
3 Service	Fire Safety Equipment Sales and Service							P	
3 Service	Food Bank						CS		
3 Service	Fueling Station						CS		
3 Service	Funeral Home						P		
3 Service	Group Fitness- Aerobics/Dance/Karate/Yoga					P	P	P	P
3 Service	Hair Salon					P	P		P
3 Service	Indoor Fitness/Gymnasium					P	P	P	P
3 Service	Indoor Public Assembly Facility				C	P	P		P
3 Service	Locksmiths						P	P	
3 Service	Massage and Bodywork Therapy					PS	PS		PS
3 Service	Metaphysical Wellness Services						CS		
3 Service	Parking Lots					P	P		
3 Service	Real Estate Rental Management Facility						C	P	

We believe this change is consistent with the purposes of the C-2 District as described in Section 6.2.4.2.

**6.2.4.2. C-2 General Commercial District.** The C-2 general commercial district is intended to foster a thriving commercial business community with a variety of uses, activities, and scales. The general commercial designation allows the broadest range of uses

We believe that in accordance with Section 6.5.1 you will find that this previously unlisted use in the C-2 District is compatible with uses already permitted in the District.

**6.5.1.** The UDO Administrator shall determine whether or not an unlisted use is substantially similar to an already defined use category or use type. A proposed use will not be denied solely because it is not included in this UDO as a listed use, unless listed in subsection 6.5.3. An unlisted use will be denied if the UDO Administrator determines that the unlisted use is substantially similar to a use which is expressly prohibited in that district. The UDO Administrator shall use the following factors as a guideline when classifying a new or unlisted use to determine if such use is classified in a manner consistent with other similar uses in the applicable zoning district.

- Consistency with the stated intent of the zoning district.
- Consistency with the adopted vision statement and policies of the Comprehensive Plan.
- Density of development (number of units, square footage, etc.).
- Intensity of use consistent with the zoning district in which the use is to be located.
- Type of activity associated with the use.
- Number of customers and length of stay.
- Generation of pedestrian and vehicular traffic.
- Potential impacts such as noise, light, odor, etc.
- Public safety.
- Environmental effects.
- Negative impacts on adjacent land uses.

We believe that “Real Estate Rental Management Facility” is substantially similar to the uses below, currently found in the Use table as permitted in the C-2 Zoning District.

5 Office	Building Contractor's Office							P	P		
5 Office	Office w/ Outdoor Storage of Materials/Equip./Vehicles								P		
5 Office	Professional Office, including General Business, Financial, Real Estate Sales, Insurance, Attorney, Accountant, Mortgage							P	P		P
2 Retail	Beach Recreation Equipment Rentals/Sales							P	P	P	
2 Retail	Furniture Store								P		
2 Retail	General Retail, including clothing, gifts, candy, toys, shoes, jewelry, notions, beach equipment, bakery, antiques, hobby goods, magazines/comics, crafts, dry goods, gifts, musical instruments, bookstores, sporting goods (and the incidental manufacturing, repair, or service of goods on the premises)							P	P	P	P

However, in particular because the C-2 zone abuts NC 12, this use should be Conditional (C) rather than Permitted (P). Conditional Use will allow the Town to visually maintain the Beach Road corridor if and when this use is proposed there. The Town might require installation of additional plantings or fencing, that loading dock doors be placed on the side or rear of the building, additional architectural features, modified lighting, or other enhancements to the development.

Finally, as a practical matter, if the use is permitted and when a Zoning Permit is applied for, the facility can comply with the applicable standards.

There are currently sixty-six (66) parking spaces on the site. Only ten spaces would be required by the use.

**10.14.1.** The number of off-street parking spaces required by this section shall be provided on the same lot with the principal use, except as provided with parking reductions approved as part of shared parking agreements, inter-parcel connections, conditional use permits or variances granted by the Town, or in accordance with the parking reduction schedule in Section 10.15, Alternative and Reduced Commercial Parking Requirements. The required number of off-street parking spaces specified for each use shall be considered as the absolute minimum.

**10.14.5.** All space requirements which are based in part or in whole upon employment shall be computed on the basis of the greatest number of persons that are on duty at any one period during the day or night during the peak season.

**SECTION 10.16  
REQUIRED PARKING BY USE.**

Minimum required parking by use shall be as follows. For sites with multiple principal uses, the parking requirements for each use must be met on-site or through shared parking in accordance with Section 10.15, Alternative and Reduced Commercial Parking Requirements.

Service	Real Estate Rental Management Facility	One parking space for each 200 square feet of office space plus 1 space for each employee affiliated with any real estate rental management facility with a minimum of 2 spaces.
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According to Section 10.17 only a Loading Space is required. However the owner needs a full berth. There is adequate space on the site to provide a full berth in compliance with the ordinance. Only re-striping would be required.

**SECTION 10.17  
OFF-STREET LOADING. 10.17.1.**

One or more loading spaces shall be provided for standing, loading and unloading operations either inside or outside a building and on the same premises with every building or structure erected after the enactment of this UDO and shall be in accordance with the requirements of the following table. A loading berth shall have minimum plan dimensions of twelve (12) feet by sixty (60) feet and a 14-foot overhead clearance. A loading space need not be necessarily a full berth but shall be sufficient to allow normal loading and unloading operations of a kind and magnitude appropriate to the use.

10.17.2. Loading spaces shall be located at least fifty (50) feet from any street right-of-way and shall be paved with asphalt, concrete, porous paving as approved by the Town Engineer or an open-face paving block over sand and filter-cloth base, provided that the open-face paving block is equivalent to Turfstone™ with regards to compressive strength, density, absorption and durability.

TABLE 10-3: OFF-STREET LOADING REQUIREMENTS	
Use Classification	Space Requirements
Retail operations, and all first floor nonresidential uses, with a gross floor area of less than 20,000 square feet, and all wholesale and light industrial operations with a gross floor area of less than 10,000 square feet.	A loading space (not necessarily a full berth) as defined in this section.

Because there would be no physical changes in the site no stormwater provisions or buffer installation would be required.

I hope that this memo adequately addresses the issues required by an application. If not, or if you have any concerns at all, please contact me.

Ben

We believe it is important to fully describe the use, Real Estate Rental Management Facility, in order to understand why it is compatible with other uses already permitted in the C-2 District.

First and foremost, the activities of a Real Estate Rental Management Facility occur during normal business hours. There are not any activities earlier or later which would be bothersome to neighbors.

There are also not any processes which take place inside or outside of the building which would be bothersome to neighbors. Nothing occurs that produces odors. There are no noise producing operations – no fabricating or manufacturing of any kind.

As we understand and the applicant envisions the use, no storage would normally occur outside. There are no materials used in real estate management (and maintenance) which would appropriately be stored outside other than lumber, and those materials would be delivered directly to their worksites – not to the management facility.

The activities which do occur are:

The arrival and departure of employees at normal business times. The parking standard envisions very few employees and this is true for the applicant.

The arrival and departure of service personnel or vendors throughout the day.

Receiving shipments of furniture, appliances, fixtures, and finish materials like rolled carpet or paint. Generally these products would be for the purposes of repair and replacement, not for new construction. There may however be small quantities of building materials (like doors and door hardware). Think of anything which might be broken in a rental house and need to be replaced or repaired quickly.

Indoor storage of the materials described above. There may also be small quantities of cleaning supplies.

Normal office functions like inventory control, accounting, etc.

The activities which do not occur include:

Laundry.

Construction.

Outdoor storage.

Stocking of building materials, other than as described above.

Storage of pool chemicals. Pool maintenance vendors store their own chemicals.

Whether these uses, singly or in the aggregate, are more intense than other uses already permitted, either by right or conditionally in C-2, is debatable. Among what we would describe as permitted or conditional uses with equal or greater intensity are:

Multi-family development (C)

Dormitories (C)

Hotels (C)

Convenience Stores (P) *(like the 7-11 across from Jockey's Ridge)*

Grocery Stores (P) *(like the Food Lion, two blocks north of the applicant's site)*

Automobile Repair (C)

Car Washes (C)

General Retail (P) *(including the incidental manufacturing, repair, or service of goods on the premises)*

Group Fitness and Indoor Fitness (P) *(like the sports club, a few blocks north of the applicant's site)*

Restaurants of every description (C)

Mixed Use Development (C)

Shopping Centers (C) *(like the one where Food Lion is located)*

A School, College, or Community College (C)  
Religious Complexes, including those with Schools (C) (*like St. Andrew's*)  
Theaters (P) (*as the Sports Club was before its conversion*)

All of those uses generate more traffic, more noise, and more visual impact than a Real Estate Rental Management Facility.

For other specific examples of permitted higher impact occupancies in the district, it is worth noting that the last approval for the applicant's particular site (and for the existing building) was two years ago for a performing arts theater with 438 seats and requiring 68 parking spaces. That was an administrative approval because the use is permitted. There were no conditions, and no limits on the number of productions or the hours, which would be the same standard for any theater in the district. It is also worth noting at this point that the site in question began life as part of a shopping center (The Galleon Esplanade) which would be a permitted use today. Later, and for a long period, the same building served as a church, permitted conditionally. That church, like most churches today, hosted events throughout the week, many of which generated significant traffic.

Going back to the UDO's Table of Uses, and continuing with those uses which are permitted in the C-2 zone, but which we believe have much in common with a Real Estate Rental Management Facility are:

A Building Contractor's Office (P)  
Professional Offices (P)  
Furniture Stores (P)  
On-site Beach Equipment Rentals (Accessory P)

Most importantly, regarding the Land Use Policy considerations staff cited in their report:

LU-9; pg. 3-20 – 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.

Ours is a community built on tourism and weekly cottage rentals. Real estate rental management serves seasonal residents directly, and year-round residents through employment.

LU-10; pg. 3-20 – Discourage high intensity land uses that produce significant noise, light, heavy vehicle traffic, noxious fumes or poor air quality, are unsightly, encourage unsafe behavior, or require large amounts of land for heavy industrial uses, processing, or storage of materials or equipment.

The proposed use does none of these. Already permitted C-2 uses actually do produce heavy traffic and more light.

LU-10a: Evaluate land uses specified in each zoning district and further clarify which uses are appropriate based on the intent of each district, their overall compatibility with current land uses, and desired future development patterns.

This evaluation is being accomplished by today's discussion. We believe we are demonstrating compatibility.

LU-10b: Maintain the current boundaries of the C-3 District and do not expand these uses to other parts of the town.

There are a number of uses in C-3 which are already permitted in other districts, including C-2. These include greenhouses, fitness facilities, building contractor's offices, education and research facilities, and fine craft and folk art production. The presence of a use in C-3 is clearly not an automatic prohibition in C-2.

EC-1; pg. 3-117 – Develop and promote a sustainable economy that supports a high quality of life for residents and visitors without compromising the integrity of natural and cultural resources and a sense of place.

We believe as stated above that this use does support the economy and do not see how this compromises natural or cultural resources or sense of place.

EC-3; pg. 3-117 – Meet the infrastructure and service needs of the community at appropriate levels as the community continues to grow.

We believe we have already shown how real estate management does this.

EC-5; pg. 3-122 – Direct new commercial growth into neighborhood commercial nodes, activity centers, or areas currently zoned for commercial development with emphasis on reuse of existing structures.

In the applicant's case the use is proposed for a previously developed site and existing building.

Based on the activities which actually comprise a Real Estate Rental Management Facility, based on the higher-intensity uses already permitted in the district (two of which have been permitted on the applicant's site), based on the similar uses already permitted in the district, and based on what we see as consistency with the Land Use Plan, we believe a real estate rental management facility is fully compatible with the district.

Staff, having expressed their concerns about the use in this district, has added a number of additional protections. These include:

Real Estate Rental Management Facility shall not be located upon a lot having frontage on NC 12, Virginia Dare Trail. This is acceptable to the applicant.

Real Estate Rental Management Facility shall not be located upon a lot with a lot area less than 20,000 square feet. This is acceptable to the applicant and the site in question would comply

Whether as a new use or a change of use, Real Estate Rental Management Facility must adhere to the buffering requirements of 10.93, Landscaping, Buffering, and Vegetation Preservation and specifically Section 10.93.3.2, Commercial Transitional Protective Yards and 10.93.3.3, High Impact Uses. This is acceptable to the applicant and the landscaping can be added to the site in question.

This use shall adhere to hours of operation consistent with Article III of the Town Code, Noise Ordinance such that no activity shall occur between the hours of 11:00pm and 7:00am. This is acceptable to the applicant.

Outdoor storage of materials or equipment shall be prohibited. This is acceptable to the applicant.

Given the warehouse type nature of a facility such as a Rental Management Facility, freestanding signage and wall signage shall be kept to a minimum, not to exceed 32 square feet for freestanding signage and no more than 10 percent of the wall area. This is also acceptable to the applicant.

The use shall adhere to low-level of activity lighting standards as referenced in Section 10.37, Specific Lighting Application Standards. And finally, this is also acceptable to the applicant.

While we believed the use was compatible with the district as submitted, with these additional conditions there should be little doubt of its compatibility and we ask that you approve the ordinance as so amended. We appreciate your consideration of this application and are happy to answer any questions.



# MEMORANDUM

## Town of Nags Head

### Planning & Development Department

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To: Planning Board

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

Date: July 16, 2020

Subject: Consideration of a text amendment to the Unified Development Ordinance to allow Furniture Stores as an allowable use as part of commercial mixed-use uses

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#### OVERVIEW

Cahoon and Kasten Architects, PC has submitted the attached text amendment application on behalf of Sumit Gupta of Legacy Home Services Inc. The requested amendment is proposing to amend Section 7.32 of the UDO, and specifically Section 7.32.2., to add the Furniture Store use as an allowable use for all Commercial Mixed-Use designations; this would include the following use types: Commercial with Accessory Residential, Group Development, Mixed Use Development, Multiple Principal Uses, and Shopping Centers. Currently, and without this amendment, a Furniture Store Use would not be allowed to be incorporated as part of one of the aforementioned mixed-use uses. Generally, the various mixed-use uses contemplate and allow for multiple independent entities and/or uses to occupy a single building or property.

It is also important to note that furniture stores are an allowed use only within the C-2 zoning district. Therefore, it would be within that district only that a furniture store could be incorporated as part of a mixed-use use. With the exception of the Commercial with Accessory Residential use, all other mixed-use use designations require a conditional use permit within the C-2 district.

Applicable definitions are as follows:

- **Commercial with accessory residential** means a principal commercial use with accessory single-family residences either attached or detached. This use could include single-family residential, duplex, or multiple detached single-family residential dwelling units configured in a cottage court arrangement.
- **Mixed-use development** means a single building containing more than one type of land use or single development of more than one building, and use, under common ownership, where the different types of land uses are in close proximity, planned as a unified complementary whole, and functionally integrated to the use of shared vehicular and pedestrian access and parking areas. Mixed use is defined by a combination of professional offices, personal services, indoor recreation facilities, retail, and/or restaurant uses in combination with residential development.

- **Multiple principal uses** means multiple, unrelated, primary or predominate uses located within one building.
- **Shopping Center** means a single, commercial structure which includes or is designed to include two or more establishments with a combined floor area of at least 10,000 square feet planned for a single or contiguous lot.
- **Furniture store** means an establishment that sells goods and/or movable objects, intended to support various human activities such as seating, eating, and sleeping, for furnishing or improving housing units that make a room or other area ready for occupancy.

Additionally, there is a definition for furniture showroom, as follows, but this is not identified as a separate use in the UDO:

- **Furniture showroom** means a retail establishment that utilizes large, open floor areas to display furniture or mattresses.

While it is important to remember that text amendments are not site specific, this text amendment has been proposed with the intent to seek a conditional use permit to incorporate the use as part of a Multiple Principal Use use of the existing structure located at 205 East Baltic Street (His Dream Center) and situated within the C-2 zoning district; this application has been filed and is expected to come before the Planning Board for review and recommendation following resolution of the proposed text amendment.

## **POLICY CONSIDERATIONS**

While staff has not identified policies within the Town's Comprehensive Plan specific to "Furniture Stores" in association with mixed-use uses, the following policies are generally relevant and should be taken into consideration:

LU-9; pg. 3-20 – 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.

EC-1; pg. 3-117 – Develop and promote a sustainable economy that supports a high quality of life for residents and visitors without compromising the integrity of natural and cultural resources and a sense of place.

EC-3; pg. 3-117 – Meet the infrastructure and service needs of the community at appropriate levels as the community continues to grow.

EC-8; pg. 3-123 – Enhance economic health and increase employment opportunities through business retention and expansion.

## STAFF RECOMMENDATION

In review of this text amendment application, Staff generally has no concern with listing the use of “Furniture Store” as an allowable use for all Commercial Mixed-Use designations and believes it is consistent with applicable policies. As noted, this would only be applicable within the C-2 zoning district, and, with the exception of the Commercial with Accessory Residential use, would require a conditional use permit. Therefore, Staff recommends adoption of the proposed text amendment.

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

### *3.5.3. Action by the Planning Board.*

*3.5.3.1. Every proposed amendment, UDO text amendment or zoning map amendment, shall be referred to the Planning Board for its recommendation and report. The Board of Commissioners is not bound by the recommendations, if any, of the Planning Board.*

*3.5.3.2. Prior to the consideration by the Board of Commissioners of a proposed UDO text amendment or zoning map amendment, the Planning Board shall advise and comment on whether the proposed amendment is consistent with the Comprehensive Plan. The Planning Board shall provide a written recommendation, certified by the UDO Administrator, to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the Comprehensive Plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners.*

*3.5.3.3. Members of the Planning Board shall not vote on recommendations regarding any UDO text amendment or zoning map amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.*

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

### *3.5.4. Action by the Board of Commissioners.*

*Action upon an UDO text amendment or zoning map amendment, including the scheduling of a public hearing, will be at the discretion of the Board of Commissioners.*

*3.5.4.1. Before an item is placed on the consent agenda to schedule a public hearing, the Planning Board’s recommendation on each proposed amendment must be received by the Board of Commissioners. If no recommendation is received from the Planning Board within 30 days from the date when submitted to the Planning*

*Consideration of a text amendment to the Unified Development Ordinance to allow Furniture Stores as an allowable use as part of commercial mixed-use uses*

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*Board, the petitioner may take the proposal to the Board of Commissioners without a recommendation from the Planning Board. However, the Planning Board may request the Board of Commissioners to delay final action on the amendment until such time as the Planning Board can present its recommendations. No such limitations shall apply to applications or requests submitted by Town staff or any Town Board.*

*3.5.4.2. After receiving a recommendation from the Planning Board on a proposed amendment, the Board of Commissioners may proceed to vote on the proposed ordinance, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.*

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

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

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

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

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

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

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

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

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

*3.5.4.6. In deciding whether to adopt a proposed amendment to this UDO, the central issue before the Board of Commissioners is whether the proposed amendment advances the public health, safety, or welfare. When considering proposed map amendments:*

*3.5.4.6.1. The Board of Commissioners shall consider the entire range of permitted uses in the requested classification.*

**Attachments:**

1. Proposed Ordinance; and
2. Application from Cahoon and Kasten Architects, PC

**(DRAFT)**  
**AN ORDINANCE AMENDING THE CODE OF ORDINANCES  
OF THE TOWN OF NAGS HEAD, NORTH CAROLINA TO LIST “FURNITURE STORE” AS  
AN ALLOWABLE USE IN COMMERCIAL MIXED-USE DESIGNATIONS.**

**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 submitted requesting consideration be given to listing “Furniture Store” as an allowable use within Commercial Mixed-Use Designations.

**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.

**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 7.32.2 Retail**. be amended as follows:

PART VI. – COMMERCIAL MIXED-USE

Section 7.32 – General Provisions.

The following provides the allowable uses for all Commercial Mixed-Use designations as permitted in accordance with Section 6.6, Table of Uses and Activities:

7.32.2. Retail.

- Food/Grocery Store.
- Furniture Store.
- General Retail, including...

*Consideration of a text amendment to the Unified Development Ordinance to allow Furniture Stores as an allowable use as part of commercial mixed-use uses*

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PART II. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. This ordinance amendment shall be in full force and effect upon the date of adoption by the Board of Commissioners.

\_\_\_\_\_  
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

ZONING AMENDMENT APPLICATION  
TOWN OF NAGS HEAD, NORTH CAROLINA

Applicant Ben Cahoon as Agent for Sumit Gupta

Mailing address 118 W. Woodhill Drive, Nags Head, NC 27959

Explanation of request

Zoning Ordinance - Section(s) 7.32  
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

In section 7.32.2 Retail add the following use:

- Furniture store

Reason for request

Furniture stores are permitted in the C-2 zoning district. But while convenience stores, grocery stores, pharmacies, general retail, and hardware stores can be paired with other uses in mixed use and (2) principal use configurations, furniture stores cannot.

Ben Cahoon / Benj [Signature]  
Applicant

7/13/20  
Date



## **BOC ACTIONS WEDNESDAY, JULY 1, 2020**

1. Call to order - Mayor Cahoon called the meeting to order at 9:00 a.m.
2. New Manager - On behalf of the Board, Mayor Cahoon welcomed new Interim Town Manager Greg Sparks to the Board meeting.
3. 2020 Season Lifeguards - Fire Chief Randy Wells reported that in keeping with the Governor's Executive Order which extends Phase 2 of the COVID-19 pandemic that the Town's 2020 summer season lifeguards will be introduced via video at the August 5<sup>th</sup> Board meeting.
4. Agenda - The Board passed a motion to adopt the July 1<sup>st</sup> agenda as presented.
5. Recognition - New employees Environmental Planner Kylie Shephard and Payroll and Benefits Specialist Sandra Garland were welcomed to Town employment by their respective Dept Heads Michael Zehner and Amy Miller.

Fire Chief Randy Wells introduced Fire Engineer Anthony Dillon who was recognized by the Board for 10 years of service; He also introduced Fire Lieutenant Mark Edwards who was recognized for 15 years of service.

Water Plant Superintendent Nancy Carawan introduced Water Operations Supervisor David Perry who was recognized and congratulated for 25 years of service.

6. Public Comment - no one spoke during Public Comment.
7. Consent agenda - The Consent Agenda was approved as presented and consisted of the following:
  - Budget Adjustment #1 to the FY 20/21 Budget
  - Write-off of old business licenses/registration fees
  - Approval of minutes
  - Consideration of agreement with Dare County for Coronavirus Relief Fund allocation
  - Consideration of FY 20/21 Reimbursement Resolution to reimburse the cost of certain expenditures
  - Consideration of resolution to update Town banking signatures
  - Consideration of updated Cashier Policy
  - Request for Public Hearing to consider a revised preliminary plat for a major subdivision - Coastal Villas
8. Public Hearing - to consider text amendments to the Unified Development Ordinance to expand the principal sale items from outdoor stands to include reservations and tickets for events/activities - The Board adopted the text amendments as presented with a 4 - 1 vote with Comr. Fuller casting the NO vote. Comr. Fuller felt that the use is already an allowed use and that the amendment allows additional square footage of building space that is not needed.
9. Planning Director update - Planning Director Michael Zehner presented his monthly update which included reports on the following:
  - Regulations on large occupancy homes
  - Residential stormwater regulations - from the Jan 2020 Board Retreat
  - 2020 Census
  - Update on beach access grants

Dowdy Park Farmers Market - The Board passed a motion to unfreeze the \$16,000 Dowdy Park part-time position funds for a 30-day period - until the August 5<sup>th</sup> Board meeting - and to have staff spend the funds at their discretion. A post-action report from staff after tomorrow's Dowdy Park Farmer's event was requested.

Recommendations on stormwater control measures/possibilities - Mayor Cahoon spoke in favor of Director Zehner's presentation and he noted that a tiered approach may work. He felt that the stormwater discussion would be well served in a Board workshop setting in late fall/winter and Board members agreed.

**10.** Town Code amendment - The Board adopted the amendment re: camping as presented. Staff is to return at some point with another proposal with further clarifications for Board consideration.

**11.** Hazard Mitigation Plan - The Board adopted the resolution adopting the Hazard Mitigation Plan as presented.

**12.** Decentralized Wastewater Management Plan - It was Board consensus to approve the Decentralized Wastewater Management Plan scope as presented and that staff take into account the Board's comments/questions from the discussion.

**13.** Multi-use Path - RPC Contracting representative Eddie Valdivieso was present and spoke with the Board concerning issues found with construction of the west side multi-use path project. Mr. Valdivieso reported that substantial completion for the 8C path project is July 16<sup>th</sup>; for the 8B path project it is mid-August. Traffic conflicts, unexpected utility line locations to include changes in elevation, and subtle design changes made out in the field have contributed to delays. Staff is to keep the public updated on the status.

**14.** Committee reports - It was noted that there are people out on Jennette's Pier; Comr. Brinkley reported that there has not been a recent meeting on the pier status.

**15.** Interim Town Manager Greg Sparks - He thanked the Board for his appointment and stated that he has been made to feel very welcome by everyone. He emphasized that he is in the process of getting up to speed on the Town's issues.

**16.** Comr. Brinkley - Dep Town Manager Garman provided an update on recycling: Subscription service for Town residents – Currently, there are 129 residents that have expressed interest. Reduce and Recycle Task Force - Currently, there are 25 people that have expressed interest. The Town's recycling centers will continue to be utilized in the off season. The Task Force discussion to include an accurate charge and appointments will take place at the August Board meeting.

**17.** Mayor Cahoon - Possible dates for a Sep 2020 Retreat will be discussed at the Aug Board meeting.

**18.** Comr. Renée Cahoon - She noted that the Governor's Executive Order mandated the wearing of masks and she has seen more people here on the Outer Banks than ever before. She feels it is the responsibility of the Outer Banks Visitors Bureau to communicate to the public that the Outer Banks requires mask-wearing - she is concerned that not enough communication is being given to the public.

Comr. Fuller is the Town's representative on the Dare County Tourism Board and he agreed and pointed out that the OBVB currently has a campaign to run throughout the summer on many media outlets and they have created a web page that speaks to the mask-wearing issue and that emphasizes the three W's (Wear, Wait, Wash). In addition, the OBVB has produced masks that are branded and handed out free from welcome centers. Comr. Renée Cahoon spoke in favor of this campaign and suggested a stronger message that is more visible to the public so that people are prepared before they visit.

**19.** Adjournment - The Board passed a motion to adjourn at 11:20 a.m.



# MEMORANDUM

## Town of Nags Head

### Planning & Development Department

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To: Planning Board  
From: Michael Zehner, Director of Planning & Development  
Date: July 17, 2020  
Subject: Legacy Establishments/Structures

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For context, Staff has attached the memorandum and materials for this discussion item that were provided to the Board for the meeting on June 16, 2020. Generally, the Board was supportive of the option presented by Staff at the meeting that would make amendments to Article 5, *Nonconformities*, of the UDO, by providing nonconforming restaurants, hotels, or retail uses that commenced on or before December 31, 1980 with the option of seeking a conditional use permit to modify the use, including enlarging or altering the use, in a manner that would otherwise be precluded by the provisions of Sections 5.5. and/or 5.6. of the Article. The Board requested that Staff review and determine the specific instances where such a provision would be applicable.

Following the meeting, Staff conducted the requested review and determined that the following hotels were all nonconforming uses, all located with the CR, Commercial Residential Zoning District, and which may benefit from the provision being considered:

1. Comfort Inn South, 8031 S. Old Oregon Inlet Road, constructed in 1974
2. Dolphin Motel, 8017 S. Old Oregon Inlet Road, constructed in 1960
3. Owens Motel, 7115 S. Virginia Dare Trail, constructed in 1966
4. Seafoam Hotel, 7111 S. Virginia Dare Trail, constructed in 1961
5. Islander Motel, 7011 S. Virginia Dare Trail, constructed in 1973
6. Blue Heron Motel, 6811 S. Virginia Dare Trail, constructed in 1975
7. Surf Side Hotel, 6711 & 6701 S. Virginia Dare Trail, constructed in 1984 & 1989
8. Holiday Inn Express (former Nags Head Inn), 4701 S. Virginia Dare Trail, constructed in 1987
9. Colonial Inn, 3329 S. Virginia Dare Trail, constructed in 1947

Additionally, Staff determined that there were no restaurants or retail establishments that were considered to be a nonconforming use. However, related, Staff did determine that the presence of residential units in conjunction with the Nags Head Fishing Pier constituted a nonconforming use of the site, which may be something that the Board wished to address.

Based upon the above, given that the necessary scope of any treatment would only apply to nonconforming hotels, it may be more appropriate to address within Section 7.12, *Hotels*, of Article 7, *Supplemental Regulations*, similar to the treatment of nonconforming cottage courts. Under this option, the following treatment may be sufficient (see proposed Section 7.12.3. below):

## SECTION 7.12 HOTELS.

Hotels are permitted in accordance with Section 6.6, Table of Uses and Activities, provided the following additional requirements and conditions are met:

### 7.12.1. Dimensional Requirements.

TABLE 7-2: DIMENSIONAL REQUIREMENTS FOR HOTELS			
	C-1	C-2	HO
<b>Lot Width</b>	100 feet		150 feet
<b>Front Setback</b>	15 feet; portions of buildings greater than two stories shall be set back an additional 10 feet.	30 feet; portions of buildings greater than two stories shall be set back an additional 10 feet.	15 feet; portions of buildings greater than two stories shall be set back an additional 10 feet for every story over two. In any instance the setback need not exceed 30 feet.
<b>Rear Setback</b>	25 feet		
<b>Side Setback</b>	10 feet; 15 feet for corner lot; portions of buildings greater than two stories shall be set back an additional 10 feet.		10 feet; 15 feet for corner lot; portions of buildings greater than two stories shall be set back an additional 10 feet for every story over two. In any instance the setback need not exceed 30 feet.
<b>Height</b>	35 feet		60 feet
<b>Open Space</b>	50% of side yard to remain as open space.	50% of side yard to remain as open space.	50% of side yard to remain as open space. Minimum 5 feet, Maximum 10 feet.
<b>Lot Coverage</b>	55%		65%
<b>Density</b>	Maximum 20 units per site.	None	None
<b>Unit Size (Room)</b>	Minimum 300 sq. ft, Maximum 700 sq. ft.		
<b>Unit Size (Efficiency)</b>	Minimum 400 sq. ft, Maximum 700 sq. ft.		
<b>Unit Size (Suite)</b>	Minimum 400 sq. ft, Maximum 900 sq. ft. Up to 33% of units can be suites.		Minimum 400 sq. ft, Maximum 1,200 sq. ft. Up to 33% of units can be suites.
<b>Minimum Units Per Building</b>	2		
<b>Building Separation</b>	20 ft; A sidewalk or boardwalk constructed to provide a grade separation from vehicular traffic of at least six inches shall connect all principal buildings on the site. Separate buildings shall be connected with pedestrian passageways that are striped when crossing traffic lanes.		
<b>Ocean/Sound Access</b>	Hotel parcels east of US 158 must be within 1,000 feet in a straight-line distance to a public ocean access. The access must consist of a minimum five-foot wide improved pedestrian path. Hotels west of US 158 must	Hotel parcels east of US 158 must be within 1,000 feet in a straight-line distance to a public ocean access. The access must consist of a minimum five-foot wide improved pedestrian path. Hotels west of US 158 must	None.

TABLE 7-2: DIMENSIONAL REQUIREMENTS FOR HOTELS			
	C-1	C-2	HO
	provide direct, private soundfront access	provide direct, private soundfront access	
<b>Accessory Uses</b>	Retail shops, offices, restaurants, indoor entertainment facilities, indoor public assembly for the benefit of occupants, guests and the general public, cottage court.  Hotel allowed as accessory to other commercial.  Dormitory for employee housing.  Single-family dwelling for employee/owner housing.		Uses permitted as accessory to hotels in the C-2 district and outdoor recreation activities as allowed in the HO district.  Hotel allowed as accessory to other commercial.  Dormitory for employee housing.  Single-family dwelling for employee/owner housing.

**7.12.2. Dormitory for Employee Housing.**

Hotels may have accessory, employee dormitories intended to furnish group housing for employees provided the following conditions are met:

**7.12.2.1.** All accessory employee dormitories must be located on the same site as the hotel use.

**7.12.2.2.** An employee dormitory shall not contain more than one (1) kitchen.

**7.12.2.3.** The square footage of an employee dormitory building shall be limited to no more than twenty-five (25) percent of the square footage of the principal hotel building(s) on the site.

**7.12.3. Nonconforming Hotels.**

Where an existing hotel is considered to be a legally nonconforming use of land and/or legally nonconforming use of a structure, pursuant to Sections 5.5 and/or 5.6 of the UDO, a conditional use permit may be sought in accordance with Section 3.8, Conditional Use Permits, to modify the use and/or structure, including enlarging or altering the use and/or structure, in a manner that would otherwise be precluded by the provisions of Sections 5.5 or 5.6, or subsections thereof.

Generally, Staff is of the opinion that it would be appropriate to address within Section 7.12 or within Sections 5.5 and 5.6. Addressing within Section 7.12, again, would be consistent with the similar provision addressing nonconforming cottage courts; however, addressing within Sections 5.5 and 5.6 would seem most germane. Ultimately, the best option may be the one that would be most apparent to those that would need to make use of the provision.

Staff appreciates the Board’s further review and input on this matter.



# MEMORANDUM

## Town of Nags Head

### Planning & Development Department

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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; **updated June 15, 2020**

Subject: Discussion of Legacy Establishments/Structures

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**\*\*Updated content in bold underline, deleted material in ~~strike through~~\*\***

### 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.~~ **The Planning Board discussed this item further at their meeting on May 19, 2020; the Board requested that Staff further explore options that did not require the creation of an overlay zoning district, and to present those options to the Board for further consideration.**

### 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 a 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.

**Based upon direction from the Planning Board, Staff reconsidered the impact of Article 5 provisions on legacy establishments and structures. Generally, a nonconforming structure, subject to Section 5.3, would not be precluded from improvements and repairs so long as they did not increase the degree of nonconformity; in Staff's opinion, this limitation would not be inconsistent with relevant policies or jeopardize the preservation of legacy structures. However, the provisions of Sections 5.5 and 5.6 are limiting and jeopardize the preservation of legacy establishments and structures; provisions contained in these sections preclude:**

- **Nonconforming uses from being enlarged or altered in a way which increases the degree of nonconformity, or the extension of the use to occupy a greater area of land than was occupied at the effective date of adoption or amendment of the UDO;**
- **Nonconforming uses from being moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of the UDO;**
- **The erection of new structures on land occupied by a nonconforming use, until such use is eliminated;**
- **Otherwise conforming structures occupied by a nonconforming use from being expanded, enlarged, extended, constructed, reconstructed, moved or structurally altered;**
- **Repairs to otherwise conforming structures that may increase the cubic content or intensity of a nonconforming use; and**
- **Nonconforming structures occupied by nonconforming uses from performing repairs within any 12 month period that exceeded 50% of the assessed or appraised value.**

The conditions discussed above, **specifically those contained in Sections 5.5 and 5.6**, 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, **and Staff has attached a draft markup of Article 5 showing additions to Sections 5.5 and 5.6 which would be a viable option**. Alternatively, an overlay zoning district approach could be taken, perhaps applied in a limited geographic manner and/or to properties meeting defined characteristics; **Staff acknowledges that this approach could be more complicated than necessary to address the intended goals of the Town's policies**.

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 addressed in the markup of Article 5, Staff has proposed that flexibility be offered to nonconforming restaurants, hotels, or retail uses which commenced on or before December 31, 1980. Staff acknowledges the need to identify the number of instances where this option would be applicable.**

**At least For consideration**, 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 **Staff previously suggested that for 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. **Staff believes that the preliminary draft amendments to Article 5 accomplish the same intent without needing to create a new use type; further standards or limits beyond just nonconforming restaurants, hotels, or retail uses which commenced on or before December 31, 1980 could be considered, but should be based on where this allowance would be applicable.** 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. **As noted above, this approach may be more complicated than necessary, and given the number of applicable cases, may be less than ideal compared to addressing within Article 5.**

## STAFF RECOMMENDATION

~~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.~~

**Staff would request the Board's feedback with respect to the draft markup of Article 5; should the Board believe that this is an acceptable option warranting further consideration, Staff could return with a draft amendment, as well as additional analysis identifying where this option would be applicable within Town.**

## Previous 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*

## Attachments:

1. Markup of Article 5, *Nonconformities*, of the UDO

## **ARTICLE 5. NONCONFORMITIES**

Section 5.1 Intent.....	5-2
Section 5.2 Nonconforming Lots of Record .....	5-2
Section 5.3 Nonconforming Structure with Conforming Use .....	5-3
Section 5.4 Nonconforming Site and Parking Areas .....	5-4
Section 5.5 Nonconforming Use of Land .....	5-4
Section 5.6 Nonconforming Use of Structure .....	5-5
Section 5.7 Nonconforming Sign and Sign Structure .....	5-6
Section 5.8 Vested Right .....	5-7
Section 5.9 Historic Structures.....	5-7
Section 5.10 Application of Commercial Design Standards.....	5-8

## **SECTION 5.1 INTENT.**

**5.1.1.** It is the intent of this UDO to regulate lots, structures, sites and uses of land which were conforming at the time of their creation or construction but no longer adhere to the requirements of this UDO. The Town desires to allow nonconformities to continue until they are removed.

Nonconforming uses and nonconforming portions of structures shall not be enlarged, expanded or extended, except as specifically provided for in Section 5.6, Nonconforming Use of a Structure.

**5.1.2.** Nonconformities are allowed to continue and are encouraged to receive routine maintenance in accordance with the requirements of this UDO as a means of preserving safety, appearance, and sense of community.

**5.1.3.** However, nothing in this UDO shall be deemed to require a change in the plans, construction or designated use of any structure for which approval has been granted in accordance with Article 4, Development Review Process subject to the time limitations specified in Section 4.15 Time Limitations for Site Plans, Development Permits, & Building Permits.

**5.1.4.** Except as provided in subsection 5.6.3.2, nothing in this UDO shall prevent the strengthening or restoring to a safe condition of any structure or part thereof declared to be dangerous to life by the Building Inspector 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. However, required repairs and maintenance shall be done in conformity with the provisions of this UDO or in conformity with the regulations of the district in which it is located.

## **SECTION 5.2 NONCONFORMING LOTS OF RECORD.**

**5.2.1.** When a nonconforming lot is adjacent to one or more conforming or nonconforming lots under the same ownership as the nonconforming lot, and when any portion of a proposed structure or required use is located on two or more lots, the lots shall be combined into one single lot of record, and a plat combining such lots shall be recorded in the Dare County Register of Deeds prior to the issuance of a building permit. Existing commercial uses and structures may be exempted from this requirement as provided for under subsection 5.2.4.

**5.2.2.** In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory building may be erected on any single lot which met all legal requirements at the time of its creation and recording in the Dare County Register of Deeds, subject to the following provisions:

**5.2.2.1.** All dimensional requirements applying to that district, other than lot area and lot width, shall be met.

**5.2.2.2.** The lot must not be less than 5,000 square feet in area.

**5.2.2.3.** The lot must abut either an improved public right-of-way as shown on the most recent Powell Bill Map or on a street or access approved by the Board of Commissioners.

**5.2.2.4.** A current permit for a sewage system shall be issued by the Dare County Health Department or authorization received from the NC Department of Environmental Quality prior to the issuance of a building permit.

**5.2.3.** In any commercial zoning district, any lot which was legal at the time of its creation and recorded in the Dare County Register of Deeds may accommodate any commercial use permitted within that district, subject to the provisions contained in subsection 5.2.2 of this section.

**5.2.4.** Existing commercial uses and structures developed on multiple adjoining conforming or nonconforming lots under the same ownership, when developed under a common scheme of development and site plan, shall not be required to recombine parcels into a singular lot and may be used and developed as a single site subject to the following terms and conditions:

**5.2.4.1.** Applicable front yard, rear yard, side yard and buffering requirements for uses and structures shall not be applied to each individual lot line within the site, but shall be applied in the same manner to the outer boundaries of the identified site. This provision allows for the crossing of uses and structures over existing internal lot lines located within the site.

**5.2.4.2.** Lot coverage shall be allowed to be calculated for the entire site in the same manner that it is calculated for individual lots. Parking, stormwater management, and all other development regulations applicable to the commercial use and development on individual lots shall be allowed to be applied in the same manner to the site.

**5.2.4.3.** Multiple structures shall be permitted on a site as provided for in this section.

**5.2.4.4.** Once a site is developed as a retail shopping center or other unified commercial development requiring shared parking and in use as allowed by this section, all lots within such site must remain in the same ownership and may not be individually sold. Lots within the site may only be individually sold if all use, site, and structural nonconformities which would have otherwise resulted if the lots had not developed as a singular site as allowed by this section are removed. The provisions of this section shall apply to only those lots presently developed with commercial uses and shall not be applicable to undeveloped and unimproved lots.

### **SECTION 5.3 NONCONFORMING STRUCTURE WITH CONFORMING USE.**

A nonconforming structure may be continued, subject to the following provisions:

**5.3.1.** A nonconforming structure may not be enlarged or altered in a way which increases the degree of nonconformity. Reconstruction and additions occurring within the existing building footprint, excluding enclosed space additions above or below open decks, shall be allowed and shall not constitute an increase in structural nonconformity.

**5.3.2.** A nonconforming structure occupied by a conforming principal use destroyed or otherwise modified by any means may be repaired, maintained, or replaced with an identical or similar structure regardless of value provided the repair, maintenance or replacement does not create any new structural nonconformities or increase the degree of existing structural nonconformities.

**5.3.3.** Should such structure be moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations for the district in which it is located after it is moved, except as provided in subsection 5.3.4.

**5.3.4.** Any nonconforming structure located on a lot adjacent to the Atlantic Ocean or Roanoke Sound may be moved landward on the same lot, provided that such movement does not increase the degree of

nonconformity of the structure in any way. However, when dimensional requirements can be met, they shall be met, except as provided for in Article 8, Section 8.6.3.7, Reductions in Yard Setbacks.

#### **SECTION 5.4 NONCONFORMING SITE AND PARKING AREAS.**

Where a nonconforming site exists that was legal at the time of its creation but which would not be permitted by the regulations imposed by this UDO, the nonconforming site may continue, subject to the following provisions:

**5.4.1.** No structure on a nonconforming site may be enlarged or altered in a way which increases the nonconformity of the site.

**5.4.2.** No use on a nonconforming site may be expanded, enlarged, or increased in a way which increases the nonconformity of the site.

**5.4.3.** Any changes to a nonconforming site or parking area must comply with all of the requirements of this UDO.

**5.4.4.** The change of use of a structure on a nonconforming site from one permitted use to another permitted use shall be allowed, provided that there is no increase in the degree of nonconformity of the site. Where the site is nonconforming due to an insufficient number of parking spaces for the proposed new use, the Board of Commissioners may approve a change of use without requiring additional parking spaces in accordance with the procedures set forth in section 10.15.6.

#### **SECTION 5.5 NONCONFORMING USE OF LAND.**

Where use of land exists that was legal at the time of its creation but which would not be permitted by regulations imposed by this UDO, and where such use involves no individual structure or combinations of structures with a cumulative assessed tax value not exceeding \$5,000.00, the use may continue, subject to the following provisions:

**5.5.1.** No such nonconforming use shall be enlarged or altered in a way which increases the degree of nonconformity, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this UDO. An example of an increase in degree of nonconformity would be installing additional rides in an amusement park.

**5.5.2.** No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this UDO.

**5.5.3.** If any such nonconforming use of land ceases for any reason for a period of more than 12 consecutive months, any subsequent use of such land shall conform to the regulations specified by this UDO for the district in which such land is located. For the purpose of this article, indicators of the cessation shall include, but not be limited to, no Town water or no electrical service has been legally provided and consumed for the nonconforming use or structure in question for a period of 12 consecutive months.

**5.5.4.** No structure requiring a building permit shall be erected until the nonconforming use of land is eliminated or converted to a use permitted by the regulations of the district in which such land is located.

**5.5.5.** Nonconforming restaurants, hotels, or retail uses, where the use commenced on or before December 31, 1980, shall be eligible to seek a conditional use permit in accordance with Section 3.8, Conditional Use Permits, to modify the use, including enlarging or altering the use, in a manner that would otherwise be precluded by the provisions of Section 5.5, or subsections thereof.

## **SECTION 5.6 NONCONFORMING USE OF A STRUCTURE.**

**5.6.1.** If a use involving individual structures or combinations of structures with a cumulative replacement cost of \$5,000.00 or more exists that was legal at the time of its creation but would not be allowed in the district under the terms of this UDO, the lawful use may continue, subject to the following provisions:

**5.6.1.1.** No existing structure devoted to a use not permitted by this UDO in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted by the regulations of the district in which it is located.

**5.6.1.2.** Any nonconforming use may be extended throughout any part of a structure which was manifestly arranged or designed for such use at the time of adoption or amendment of this UDO, but no such use shall be extended to occupy any land outside such building. A conforming structure cannot be expanded to allow expansion of a nonconforming use.

**5.6.1.3.** Where a nonconforming use is superseded by a permitted use, the nonconforming use may not thereafter be resumed.

**5.6.1.4.** If the nonconforming use of any structure ceases for any reason for a period of more than 12 consecutive months, any subsequent use of the structure shall conform to the regulations specified by this UDO for the district in which such structure is located. For the purpose of this article, indicators of the cessation shall include, but not be limited to, no Town water or no electrical service has been legally provided and consumed for the nonconforming use or structure in question for a period of 12 consecutive months.

**5.6.2.** A conforming structure with a nonconforming use may be repaired and maintained, subject to the following provisions:

**5.6.2.1.** On any structure containing a nonconforming use, work may be done on ordinary repairs, or on repair or replacement of nonloadbearing walls, fixtures, wiring or plumbing, provided that the cubic content or intensity existing when it became nonconforming shall not be increased.

**5.6.2.2.** If a structure containing a nonconforming use becomes dangerous to life, destroyed or unlawful due to lack of repairs and maintenance, the building inspector shall condemn the structure in accordance with G.S. 160A-426, and the structure may thereafter be restored, repaired or rebuilt provided that the cubic content or intensity of the existing nonconforming use is not increased, or that the use is changed to a use permitted by the regulations the district in which it is located.

**5.6.2.3.** Nothing in this chapter shall prevent the strengthening or restoring to a safe condition of any structure 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.

**5.6.3.** A nonconforming structure with a nonconforming use may be repaired and maintained, subject to the following provisions:

**5.6.3.1.** On any nonconforming structure containing a nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs or on repair or replacement of nonloadbearing walls, fixtures, wiring or plumbing, to an extent not exceeding 50 percent of either the annually adjusted Dare County assessed tax value or independent appraisal value of the nonconforming structure as determined by a North Carolina Licensed Appraiser, provided that the degree of nonconformity existing when it became nonconforming shall not be increased.

**5.6.3.2.** If a nonconforming structure containing a nonconforming use becomes dangerous to life, destroyed or unlawful due to lack of repairs and maintenance, where such destruction or lack of repairs and maintenance exceeds 50 percent of either the annually adjusted Dare County assessed tax value or independent appraisal value as determined by a North Carolina Licensed Appraiser, the building inspector shall condemn the structure in accordance with G.S. 160A-426, and the structure shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of the district in which it is located.

**5.6.4.** Nonconforming restaurants, hotels, or retail uses, where the use commenced on or before December 31, 1980, and where the structure may or may not also be nonconforming, shall be eligible to seek a conditional use permit in accordance with Section 3.8, Conditional Use Permits, to modify the use and/or structure in a manner that would otherwise be precluded by the provisions of Section 5.6, or subsections thereof.

## **SECTION 5.7 NONCONFORMING SIGN AND SIGN STRUCTURE.**

If a sign and/or sign structure exists that was legal at the time of its erection that would not be allowed under the terms of this UDO, the sign may continue, subject to the following provisions:

**5.7.1.** A nonconforming sign shall not be moved or replaced except to bring the sign into conformity with this UDO. No additional signage shall be added to a site which has a nonconforming sign.

**5.7.2.** If a sign and structure become physically unsafe, damaged, destroyed or unlawful due to storm-related damage or damage incurred at no fault of the owner where such damage exceeds 50 percent of the replacement cost, the sign shall be declared destroyed by the building inspector and shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of this UDO.

**5.7.3.** If a sign and/or sign structure becomes physically unsafe, damaged, destroyed, or unlawful due to lack of repairs and/or maintenance, where the cost of repair exceeds 25 percent of the replacement cost, the sign shall be declared destroyed by the building inspector and shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of this UDO.

## **SECTION 5.8 VESTED RIGHT.**

Nothing in this Article shall conflict with the provisions in Section 3.6 pertaining to a vested right.

## **SECTION 5.9 HISTORIC STRUCTURES.**

Identified historic structures and/or maids' quarters which were legal at the time of their placement or construction, but which would not be permitted by the regulations imposed by this UDO may continue, subject to the following provisions:

**5.9.1.** Historic structures or maids' quarters may not be enlarged or altered in a way which increases the degree of nonconformity. An example of the increase in the degree of nonconformity would be to enclose above or below a nonconforming deck whether or not the footprint is increased. Additions above or below nonconforming portions of enclosed floor space shall not constitute an increase in the degree of nonconformity.

**5.9.2.** For the purpose of this section, historic structures and detached maids' quarters will be considered collectively when determining thresholds for repair, maintenance, and destruction.

**5.9.3.** Historic structures and maids' quarters listed on the National Register of Historic Places located on lots abutting the Atlantic Ocean or Roanoke Sound may be moved provided that such movement does not increase the degree of nonconformity of these structures in any way. When utilizing this provision, a minimum ten-foot separation shall be maintained between individual structures. All historic structures, when moved, shall adhere to the minimum setback requirements prescribed for single-family dwellings in the applicable zoning district if those setbacks can be met.

**5.9.4.** If a historic structure or maids' quarters becomes dangerous to life, destroyed, or unlawful due to lack of repairs or maintenance, where such destruction or lack of repairs and maintenance exceed either the annually adjusted Dare County assessed tax value or the independent appraisal value as determined by a North Carolina Licensed Appraiser, the building inspector shall condemn the structure in accordance with G.S. 160A-426, and the structure shall not thereafter be restored, repaired, rebuilt or replaced, except in conformity with the regulations of this UDO and any other applicable federal or state regulations.

**5.9.5.** For a historic structure having an attached or detached maids' quarters to make use of these provisions, no repair, alteration, restoration or replacement shall be made to these structures that would jeopardize its listing on the National Register of Historic Places.

**5.9.6.** Existing maids' quarters may be replaced subject to the other requirements of this UDO provided the following conditions are met:

**5.9.6.1.** The maids' quarters must be listed on the National Register of Historic Places.

**5.9.6.2.** The maids' quarters shall be architecturally compatible with the principal dwelling to the maximum extent feasible.

**5.9.6.3.** Replacement maids' quarters shall be similar in appearance to the maids' quarters which are being replaced.

**5.9.6.4.** The square footage limitations as defined in Appendix A, Definitions, Dwelling, Large Residential, shall be calculated separately for the maids' quarters and principal building.

**5.9.6.5.** The number of bedrooms in the maids' quarters cannot exceed the number of documented bedrooms in the original maids' quarters.

**5.9.6.6.** Total floor area of the maids' quarters shall not exceed 25 percent of the gross floor area of the principal building. Floor area for both the maids' quarters and principal building shall include the floor area of all habitable rooms and garages.

**5.9.6.7.** Setbacks shall meet the requirements for accessory structures in accordance with subsection 8.6.3.

**5.9.6.8.** Parking for the maids' quarters and principal building shall be calculated collectively in accordance with Section 10.16, Required Parking by Use.

## **SECTION 5.10 APPLICATION OF COMMERCIAL DESIGN STANDARDS.**

Change of use of any commercial structure or building, in and of itself, shall not require adherence to the provisions of Article 10, Part VI, Commercial Design Standards.