



MEMORANDUM

Town of Nags Head

Planning & Development Department

To: Planning Board

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

Date: June 12, 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.

OVERVIEW

Cahoon and Kasten Architects, PC has submitted the attached text amendment application 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. 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 in July.

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.

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.

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 applicable policies contained in the Comprehensive Plan. Therefore, Staff recommends denial of the text amendment as proposed. If the Planning Board is inclined to recommend adoption of the text amendment, Staff would recommend consideration be given to incorporating the following standards and criteria for this use within the C-2 zoning district:

- Real Estate Rental Management Facility shall not be located upon a lot having frontage on NC 12, Virginia Dare Trail. (The applicant noted this potential restriction in the application)
- Real Estate Rental Management Facility shall not be located upon a lot with a lot area less than 20,000 square feet.
- 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 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.
- Outdoor storage of materials or equipment shall be prohibited.
- 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.

- The use shall adhere to low-level of activity lighting standards as referenced in Section 10.37, Specific Lighting Application Standards.

Attachments: 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, provided that the following additional requirements and conditions are met:

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

7.22A.2 Shall not be located upon a lot with a total lot area less than 20,000 square feet.

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.

7.22.5 Outdoor storage of materials or equipment shall be prohibited.

7.22.6 Given the warehouse type nature of this facility, freestanding and wall signage shall be minimized. Freestanding signage shall not exceed thirty-two (32) square feet in area and shall not exceed twelve (12) feet in height above street grade. Wall signage shall not exceed ten (10) percent of the exposed finished wall surface are including openings on the wall where it is placed.

7.22.7 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 from and after the ___ day of ___ 2020.

Benjamin Cahoon, Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

Date adopted: _____

Motion to adopt by Commissioner _____

Motion seconded by Commissioner _____

Vote: _____ AYES _____ NAYS

ZONING AMENDMENT APPLICATION
TOWN OF NAGS HEAD, NORTH CAROLINA

Applicant Ben Cahoon as Agent for Sumit Gupta.

Mailing address 118 W. Wood Hill Drive, Nags Head, NC 27959

Explanation of request

- Zoning Ordinance - Section(s) Section 6.6
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 in the C-2 zoning District.
See attached memo.

Reason for request

The owner's Property is ideally configured for this
use, but lies within the C-2 district. The use is
not incompatible with the District.
See attached memo.

Ben Cahoon.
Applicant

6/10/2020
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