



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: 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.

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.

- 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

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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

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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.

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.