



AGENDA
Town of Nags Head Planning Board
Nags Head Municipal Complex Board Room
Tuesday, September 20, 2016; 2:30 pm

- A. **Call To Order**
- B. **Approval of Agenda**
- C. **Public Comment/Audience Response**
- D. **Approval of Minutes** – August 16, 2016
- E. **Action Items**
 - 1. Request by Derek Hatchell on behalf of I.G. Holdings to amend the conditions associated with "Car Wash" as a Conditional Use within the C-2, General Commercial Zoning District.
 - 2. Request by The Outer Banks Hospital to amend the Town Code to establish requirements for the development of buildings for outpatient services as an accessory use to the principal use of "Hospital" within the Village at Nags Head SF-4 Zoning District.
- F. **Report on Board of Commissioners Actions**
 - 1. Consideration of Preliminary Plat for Elliott Estates, Phase III, Lot 25 with request for subdivision waiver regarding access – the waiver request and preliminary plat were denied with a vote of 4-1.
- G. **Town Updates – as requested**
 - 1. Update on Focus Nags Head
 - 2. Dowdy Park
- H. **Discussion Items**
 - 1. Continued discussion of zoning ordinance text amendments establishing a table listing of permitted and prohibited uses within the Town.
- I. **Planning Board Members' Agenda**
- J. **Planning Board Chairman's Agenda**
- K. **Adjournment**

**Town of Nags Head
Planning Board
August 16, 2016
-DRAFT -**

The Planning Board of the Town of Nags Head met in regular session on Tuesday, August 16, 2016 in the Board Room at the Nags Head Municipal Complex.

Chairman Mark Cornwell called the meeting to order at 2:30 p.m. as a quorum was present.

Members Present

Mark Cornwell, Ben Reilly, Clyde Futrell, Kate Murray, Mike Siers, Jim Troutman, Pogie Worsley

Members Absent

None

Others Present

Andy Garman, Kelly Wyatt, Lily Nieberding

Approval of Agenda

Chairman Cornwell stated that based on the applicant's request Item 2 under Action Items needed to be removed. Ben Reilly moved to approve the agenda as amended. Jim Troutman seconded the motion and it passed by unanimous vote.

Public Comment/Audience Response

None

Approval of Minutes

There being no changes to the minutes, Ben Reilly moved that the minutes be approved as submitted. Jim Troutman seconded the motion and it passed by unanimous vote.

Action Items

Consideration of zoning ordinance text amendments to permit "Cottage Courts" as an allowable use within the Town.

Deputy Town Manager/Planning Director Andy Garman explained that last month the Planning Board reviewed a draft ordinance that would reinstate "cottage court" as an allowable use within the Town. The Planning Board discussed what needed to be addressed to make it a "complete ordinance". One of the items discussed was making sure it tied in with other sections (in the code) that deal with non-conforming cottage courts.

Mr. Garman explained that the proposed ordinance would allow new cottage courts in certain districts, C-2, R-2 and CR and primarily along the beach road on lots with frontage on South Virginia

Dare Trail or on South Old Oregon Inlet Road. Any existing cottage court properties that do not meet the requirements of the new ordinance would continue to be considered non-conforming and would be addressed by recent changes that allow staff and the Board to approve changes to non-conforming cottage courts. This section of the ordinance has not changed substantially. However, some wording changes have been included to clarify that cottage courts are no longer a non-conforming use. A property would either fall under the old ordinance or the new ordinance depending on the circumstances.

In addition, at the July meeting, the Planning Board requested that Staff draft language to extend the area for cottage court development to Wrightsville Avenue in the northern part of town. Staff agreed to provide an analysis of land uses in this area to determine the appropriateness of this recommendation.

Mr. Garman proceeded to review for the Board a copy of the zoning map noting that extending the area in the northern part of town would have to include the R-3 District which is currently not included in the proposed ordinance because it does not abut NC12. Mr. Garman explained that while there is some commercial development in the area between NC 12 and Wrightsville Avenue, the R-3 district is almost entirely residential in nature. Based on a review of the land uses in this area as well as the location of existing cottage courts, Staff would recommend keeping cottage court development to the beach road. Mr. Garman noted that another option would be to allow cottage courts from Memorial east instead of Wrightsville east.

Mr. Garman confirmed for Chair Cornwell that while there are several properties that have two cottages, most of them do not operate as true cottage courts and do not have names.

Mr. Garman also confirmed that this latest version of the ordinance focused on Sec. 48-128 – non-conforming cottage courts and that the underlined and strike-through items were revisions to the original ordinance in support of the new ordinance. The goal was to confirm that the use is no longer non-conforming. You can have a non-conforming cottage court that doesn't meet the site or structure requirements but it is no longer considered a non-conforming use.

Chairman Cornwell suggested that the Board discuss and vote on the optional language first.

Pogie Worsley moved to include the optional language to extend the allowable area for cottage courts to Wrightsville Avenue. Mike Siers seconded the motion.

Mr. Garman confirmed for Mr. Futrell that he did not foresee traffic on Wrightsville being affected if they allowed the use.

Mr. Garman asked if the motion included the entire R-3 zoning district.

Mr. Garman explained for Mr. Worsley that R-2 is medium density residential while R-3 is high density residential; in the zoning ordinance the R-3 has smaller setbacks and smaller lot requirements.

Mr. Worsley inquired about the ramifications of allowing cottage courts in the R-3. Mr. Garman stated that in the R-3 the expectation is that it's single family residential so it's about protecting those property owners in the R-3. Staff has only suggested cottage courts in the R-2 for lots directly abutting NC 12 which is consistent with current land use patterns.

Mr. Worsley stated that everything he's read so far has been very positive towards cottage courts.

Mr. Garman reminded the Board that the Town has not allowed cottage courts since 1985 so with this new ordinance every property along the beach road will now be available for them; this proposed ordinance will allow a significant expansion of cottage courts over the present ordinance.

Mr. Garman confirmed for Mr. Siers that on-site management is not a requirement of the ordinance.

Mr. Siers inquired what made a cottage court any more commercial than an eight bedroom rental house in that same location. Mr. Garman stated that the definition of cottage courts states that they shall be designed and intended for transient guests on a rental basis.

Mr. Siers noted that they are intermingling commercial (rental) properties with single family residential homes in the entire township and did not understand what the difference was between those and cottage courts.

Chairman Cornwell stated that he was opposed to approving the additional language (to allow cottage courts to extend to South Wrightsville Avenue); the character and culture of the area (R-3) is residential and residential for a reason. Chairman Cornwell believes allowing cottage courts there would change significantly the character of the area and that residents of the R-3 would vote it down.

There being no further discussion Chairman Cornwell called for a vote on the motion to include the optional language and it failed with a vote of 5 to 2 with Pogie Worsley and Mike Siers casting the Aye votes.

Pogie Worsley moved to recommend approval of the ordinance as originally submitted (allowing cottage courts only on NC 12 or SR 1243), Clyde Futrell seconded the motion. There being no further discussion; the Motion passed by unanimous vote.

Report on Board of Commissioners Actions

Deputy Planning Director Kelly Wyatt:

The Board of Commissioners requested that the Planning Board review further the Zoning ordinance text amendment to revise conditions of Car Wash as a Conditional Use within the C-2 District.

Chairman Cornwell asked Ms. Wyatt to have the applicant come prepared to address the Commissioners' comments when they come in front of the Planning Board at their September meeting (car washes were originally on the August Planning Board agenda however the applicant requested that the item be removed as they were not able to have representation at the meeting).

Consideration of Preliminary Plat for Elliott Estates, Phase III, Lot 25 with request for subdivision waiver regarding access was tabled until the September 7, 2016 BOC meeting to give the Commissioners time to review the additional information that was submitted just prior to the meeting.

Town Updates

Focus Nags Head

Principal Planner Holly White updated the Board on the FOCUS Nags Head which was initiated almost a year ago - July 20, 2015 with a visit by the project consultants.

At the last BOC meeting Staff updated the Commissioners on where they were in the process and presented a revised schedule which Ms. White will share with the Planning Board to demonstrate how they will be engaged in the review of the comprehensive plan elements that are coming forward.

Ms. White noted that in the Staff Report she outlined a summary of project milestones over the past year. FOCUS is a two part project with the first portion being focused on update of the Land Use Plan and incorporation of other long range planning documents into a single comprehensive document. This past year has been dedicated to seeking community input and drafting of the comprehensive plan. The second part of the project will be the code rewrite portion and Ms. White noted that there will be a point in time where there will be some overlap between the two parts.

The primary role of the Advisory Committee has been to provide guidance to staff on policy issues related to the strategic direction and vision of character areas covered in Part 2: Community Character Areas. These Character Areas represent unique areas of the Town for which distinct land use policies and zoning standards will be developed. However, the Community Character Areas represent only a portion of the plan. Part 3: Comprehensive Plan Elements & Policies covers a large portion of other necessary policy. Since the Town has already established policy guidance on many of these elements from other planning efforts, Staff felt it a better use of resources and time to work on drafting those portions of policy internally.

Ms. White reviewed a revised schedule that breaks down the Comp Plan Drafting referenced on the Gantt chart. This has been done to provide the Board of Commissioners with a defined schedule to help the Comp Plan stay on track. Part 3: Comprehensive Plan Elements & Policies will be brought forward first. This portion of the plan discusses policy that applies town wide and is more general in nature. An Advisory Committee meeting will be held the week of September 9th to review this section. Part 1 & 2: Setting & Context/Community Character Areas will be brought forward next. This section covers the vision and character area summaries. An Advisory Committee meeting will be held the week of September 30th to review this portion of the plan. The last portion of the plan to move forward will be Part 4: Implementation. This will also include a complete draft of the Comprehensive Plan. The Implementation section includes an action matrix and sections on updates and amendments to the plan. An Advisory Committee meeting will be held the week of November 11th to discuss this portion of the plan. Each portion of the plan will be presented to both the Planning Board and Board of Commissioners following presentation to the Advisory Committee.

Ms. White noted that Staff hopes to have a final community wide meeting on December 16th with a public hearing being held by the Board of Commissioners the week of January 20th.

Ms. White confirmed for Chair Cornwell that the Advisory Committee will meet September 9th to review Part 3, and then the Planning Board would review it at their September 23rd meeting.

Chairman Cornwell asked that the Planning Board receive the document at the same time the Advisory Committee gets it so they can start reviewing it, with the knowledge that it will be revised once the Advisory Committee comments are inserted. Ms. White also invited the Board members to sit in on the Advisory Committee meeting if they were interested.

Sea Level Rise

Ms. White explained that over past several weeks Staff has been working with NC Sea Grant Staff to merge the three diagrams developed at the meetings in December into one diagram. Staff participated in several webinars with Jessica Whitehead and Lisa Schiavinato to finalize the merging of diagrams.

The Sea Level Rise Committee met on in August to review the merged diagram and prioritize actions outlined in the diagram. Valuable feedback was gained at the meetings and the committee was able to participate and complete the exercise to prioritize the actions.

The actions identified how the Town could potentially adapt in the future and can be broken out into five main categories: ocean management, estuarine shoreline management, Stormwater management, water (ground/surface) management, and an all issues category in which the issues were identified in all three groups.

Town staff will be working with Sea Grant staff over the next six weeks to:

1. Revise the actions based on the voting.
2. Provide a prioritized list of action for each area as well as the top six priorities overall.
3. Update the report to incorporate the combined diagrams and action lists.
4. Set up a final committee meeting to view the final draft plan.

Ms. White confirmed for Ms. Murray that Staff foresees incorporating the final draft plan into the comprehensive plan.

Ms. White confirmed that the Commissioners will be presented with the report and prioritized list of actions. Mr. Garman stated that two of the Commissioners were in attendance at the meetings.

Mr. Garman noted that this list is just the tip of the iceberg; the Town is just starting to think about Sea Level Rise as part of the Planning Process.

Ms. White agreed stating that that the report lays out direction on how to move forward.

Dowdy Park

Mr. Garman stated that Phase I construction is underway; all the contracts for the project have been written and it is moving along. Mr. Garman noted that it is all happening fast with a deadline of January 15th for construction of the pavilion and playground, then the landscaping to be done through March. The contractors are Hatchell Concrete, Rick Godfrey – Godfrey Construction, Carolina Parks and Play and Alpha Advantage Landscaping.

Mr. Garman stated that there will be some impact to pedestrian traffic to the school and confirmed for Mr. Reilly that there will still be a cut-through for students until October or November and that any disruptions will be communicated to the Principal.

Discussion Item

Continued Discussion of zoning ordinance text amendments establishing a table listing of permitted and prohibited uses within the Town.

Ms. Wyatt explained that this was an update and continued discussion from last month of a recent North Carolina Supreme Court ruling which found that a zoning ordinance may not regulate unlisted land uses by providing a statement such as "the ordinance prohibits all land uses that are not expressly permitted".

In moving forward the courts have not said that every use must be allowed somewhere within the community's zoning districts but that any prohibitions of land uses need to be clearly stated. If there is a use the Town specifically wishes to prohibit it needs to be clearly defined as such.

Based on what other communities who have done to address the recent NC Supreme Court decision, Staff crafted a table with uses listed in the column on the right-hand side and zoning districts across the top. Existing uses currently in the ordinance are listed by zoning district and the table specifies where the use is both permitted and prohibited. Staff has also added other uses to the table as an attempt to define the uses prohibited by the town.

Ms. Wyatt noted that this table is not a finished document; this will be a work in progress and updates will be provided to the Board as they are available.

Ms. Wyatt asked the Board that as they think of them (prohibited uses) to please send an e-mail and she will add them to the list so they can be discussed at a future meeting.

Ms. Wyatt confirmed for Chair Cornwell that anything on the list that is prohibited could be permitted later by a text amendment.

Ms. Wyatt confirmed for Ms. Murray that it would be useful to keep a running list of uses that the Town may want to permit, for further discussion.

Planning Board Members' Agenda

Ms. Murray inquired about the possibility of adding recycling containers on the beach. Mr. Garman stated that he would look into it.

Mr. Futrell inquired about the Dune South fire damaged property. Ms. Wyatt stated that permits have been issued to repair it.

Mr. Futrell also suggested looking into revising the new trash pickup schedule for south Nags Head. Mr. Garman noted that this has been a topic of discussion with the Town Manager and the Commissioners and will be discussed further at the Board retreat.

Planning Board Chairman's Agenda

None

Adjournment

There being no further business to discuss, the meeting was adjourned at 3:53 PM.

Respectfully submitted,

Lily Campos Nieberding

STAFF REPORT

TO: Planning Board
FROM: Kelly Wyatt, Deputy Planning Director/Zoning Administrator
Andy Garman, Deputy Town Manager/Planning Director
DATE: September 20, 2016
SUBJECT: A proposed zoning ordinance text amendment to Town Code Section 48-407(c)(9), Conditional Uses within the C-2, General Commercial Zoning District as it relates to an "Attended Car Wash" operation.

SUBJECT OR MOTION(S):

1. Motion to recommend adoption or denial of a text amendment to Town Code Sections 48-407(c)(9) to eliminate the requirement that a car wash have an attendant.

BACKGROUND:

Mr. Derek Hatchell on behalf of I.G. Holdings, LLC, has submitted the attached zoning ordinance text amendment application, which, if adopted, would eliminate the need for an attendant to be present on-site during all hours of operation of a car wash.

In the zoning text amendment application, the applicant has cited the desire to no longer require an attendant be present onsite as it is not necessary given that the car wash would be fully automated.

There is significant history with the allowance of an attended car wash as a use within the Town dating back to 1988 when the discussions first arose with the Planning Board. Below is a brief summary:

- September 20, 1988 – Request presented to the Planning Board to include "Car Wash" as a Permitted or Conditional Use within the C-2 Zoning District. At this meeting the Planning Board felt there was a need to regulate the operation via Conditional Use approval with such conditions as limiting the hours of operation and requiring an attendant on-site.
- October 18, 1988 – Presentation to the Planning Board on the use of a car wash as a Conditional Use with specified conditions including that the car wash be enclosed and fully automated under the direct operation of an attendant and that the hours of operation be limited to 9:00am to 9:00pm. The applicant at this time expressed concern that the requirement the car wash be enclosed would eliminate the open bay/wand operation. The Planning Board felt this type of operation would promote noise, trash and congestion and continued with the recommendation of an enclosed building. The Planning Board recommended adoption of the ordinance with development standards as presented.

- December 20, 1988 – Planning Board tabled discussion as the applicant was present to discuss the proposal.
- January 17, 1989 – Planning staff presented the request once more to the Planning Board following the applicant’s assertion that the original request, to allow a self-service type car wash operation as well as automated, was not decided upon by the Board of Commissioners. The Planning Director presented the proposed conditions including the request for self-service car washes. Planning staff recommended against this because of the increased potential that an unattended, self-regulating business may create problems related to noise and litter control. While the Planning Board felt that a car wash might likely be needed within the Town they did not feel that this was the type that was desired. The Planning Board forwarded the request to the Board of Commissioners for the final decision with their recommendation of denial.
- March 6, 1989 – The Board of Commissioners held the Public Hearing pertaining to “Car Wash” as a Conditional Use within the C-2, General Commercial Zoning District. Commissioners felt that the Planning Board’s concern of noise could be addressed by an on-site attendant however the concerns of litter and possible after hours activities could not be addressed. The Board of Commissioners voted to deny the request as presented and directed staff to return with a version of the amendment incorporating the requirement for an on-site attendant as well as additional storm water measures.
- July 3, 2016 - The Board of Commissioners began the Public Hearing, following staff’s presentation on the revised ordinance, public comment was taken. Significant revisions were proposed requiring re-advertisement of the proposed amendment. The Public Hearing was set for the Boards August meeting.
- August 7, 1989 – The Board of Commissioners adopted the text amendment which incorporated the requirement that the car wash have on on-site attendant.
- September 6, 1989 – Parking standards for car washes was discussed and later adopted.

June 21, 2016 Updated Information: Following requests made by the Planning Board at its May 17, 2016 meeting, numerous revisions have been made to the proposed ordinance to include:

- A site attendant must visit the site a minimum of two times daily to ensure proper operation.
- Security cameras must be installed to record activity in vulnerable locations.
- Hours of operation have been established, this is what the Board of Commissioners recommended in the initial amendment from October, 1988.
- A minimum setback of 50 ft. has been applied to any freestanding vacuums and other service areas adjacent to a residential use or district.
- Clarification on what the word “enclosed” represents and the need to comply with Town Architectural Design criteria.

- Clarification that the required buffer must be continual and opaque. The buffer requirement on this site would not be subject to the clustering and grouping of plantings afforded in other scenarios.

Staff would note that the applicant was provided a copy of the draft ordinance prior to inclusion in the packet for review and comment. The applicant has indicated that he is in agreement with the language except for the hours of operation. The applicant would request consideration for no specific limitation on the hours of operation.

STAFF RECOMMENDATION:

Based upon the history of discussion surrounding the previous Board’s desires for any car wash to have an attendant on-site during all hours of operation, Planning Staff recommends denial of the proposed text amendment as presented.

Updated Staff Recommendation (June PB): Staff continues to recommend denial of the proposed ordinance as amended. Staff does not believe that the 50 foot setback adjacent to residential zoning districts or uses is adequate to mitigate noise concerns based on the proposed use.

PLANNING BOARD RECOMMENDATION:

At their June 21, 2016 meeting, the Planning Board voted 5-2 to recommend adoption of the proposed zoning ordinance text amendment omitting the condition that the car wash maintains hours of operation.

****August 16, 2016 Updated Information****

At the Board of Commissioners August 3, 2016 meeting the Board held the Public Hearing and, after much discussion with both the applicant and concerned citizens, asked that this item be brought back to the Planning Board for additional discussion/clarification on the following items:

- Setbacks and buffering in consideration of nearby and adjoining residential communities. *(Is 50 ft. setback adequate? Is opaque buffering best for public safety purposes, especially along front property boundary? Can fencing be used in conjunction with landscaping to achieve opaqueness?)*
- Review of the placement of the building(s) on the site. *(Desire to have the structure built to the minimum front yard setback, eliminate potential to have structure set back on a deep lot?)*
- Review of traffic flow/access only from US 158. *(Does the Town wish to require access to any such use to be from US 158, not accessed from any side street it may be adjacent to?)*
- Define/re-word “Areas of Vulnerability”. *(We do not define what an "area of vulnerability" is, difficult to regulate. Consider having all areas of the site monitored?)*
- Pro’s and Con’s of operating 24/7 versus 9am to 9pm.
- Review of decibel levels of vacuum cleaners.

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES
OF THE TOWN OF NAGS HEAD, NORTH CAROLINA**

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 a comprehensive zoning ordinance (the "Town's Zoning Ordinance") and has codified the same as Chapter 48 of the Town's Code of Ordinances (the "Town Code"); and

WHEREAS, pursuant to N.C.G.S. § 160A-174 the Town may also enact and amend ordinances that define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the Town; and

WHEREAS, A text amendment was initiated by an applicant to eliminate the requirement that a car wash operation have an on-site attendant during hours of operation.

WHEREAS, the 2010 Land Use Plan states that the Town shall continue to address the community appearance concerns through various Boards and shall work towards developing incentives designed to enhance, promote and protect the Town's architectural image and heritage;

WHEREAS, the Town further finds that in accordance with the findings above it is not in the interest of and contrary to the public's health, safety, morals and general welfare for the Town to amend the Town's Zoning Ordinance and Town Code of Ordinances as stated below.

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 ellipses ("...") shall remain as they currently exist within the Town Code.

ARTICLE III. Amendment of Zoning Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Town of Nags Head, North Carolina, that the Town Code shall be amended as follows:

PART I. That Section **48-407(c)(9), Conditional Uses within the C-2, General Commercial District**, be amended as follows:

(9) ~~An attended~~ eCar washes (automated and ~~self-service~~ enclosed only), subject to other requirements of this chapter and provided that the following conditions are met:

- a. ~~The attendant shall be present on site during all hours of operation;~~ An attendant shall visit and assess the site a minimum of two times daily during all hours of operation to ensure a clean, orderly operation. Security cameras shall be installed and positioned to provide visibility of the entire site.

- b. The hours of operation shall be between 9:00 a.m. and 9:00 p.m.
- c.~~b.~~ No principal or accessory building shall be located within 50 feet of an existing residential use or district. No freestanding vacuums, air compressors, or other vehicular servicing areas shall be located within 50 (?) feet of an existing residential use or district.
- d.~~e.~~ A car wash shall be constructed so as to allow vehicles to pass through the structure in order to create an orderly traffic flow. Furthermore, stacking spaces shall be provided for vehicles entering and exiting the site to minimize traffic congestion on public roads.
- e. A car wash shall be enclosed on at least two sides with open bays and a roof structure. A car wash must comply with the architectural design standards of Town Code Section 48-371.
- f.~~d.~~ The boundaries of the entire site shall be buffered from all adjacent properties and rights-of-way in accordance with subsection 48-482(1), buffer yard A. This buffer yard, when adjacent to residential uses and districts, shall be continuous and opaque. Fencing may be incorporated into the buffer to ensure opaqueness when necessary.
- g.~~e.~~ The site shall be designed to contain all stormwater from impervious surfaces ~~on-site from a ten-year, two-hour storm event, the equivalent being 4.24 inches of rainfall in a two-hour period~~ consistent with the applicable standards of Town Code Chapter 34 – Stormwater, Fill, and Runoff Management.
- h.~~f.~~ The car wash shall utilize a recyclable water type system.
- i. Car washes shall only be located on properties with frontage on US 158 and shall be accessed only from US 158.
- j. The principal structure shall be aligned with the front yard setback along US 158.

PART II. 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 ____ 2016.

 Robert C. Edwards, Mayor
 Town of Nags Head

ATTEST:

 Carolyn F. Morris, 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 J. G. Holdings

Mailing address P.O. Box 120, Kitty Hawk, NC 27948

Explanation of request

Zoning Ordinance - Section(s) 48-407(c)
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

Because is automated car wash will not be
a person their 24 hours to attend it.
Being car wash is total automated it is not
necessary to have an attend on site but
will have a contact number available 24 hours.
Will have service techs working car wash
after during the day.

Reason for request

Because we do not feel it's necessary
to have an attend on site all the time
when it is fully automated.

Leszale Jblasa, owner

Applicant

4/19/2016

Date

'BE IT FURTHER RESOLVED as follows: The Town Clerk is authorized to issue 80 short-term beach driving permits to be distributed to participants in its annual Surf Fishing Scholarship Tournament to be held Friday, October 2, 2015. These special permits will be valid for one-day Friday, October 2, 2015.

'Only six (6) shall be allowed per team fishing in the tournament.

'The Outer Banks Association of Realtors is responsible for the distribution of all short-term beach driving permits for the 2015 Surf Fishing Scholarship Tournament. No short-term permits for the tournament will be issued by Staff.

'The name of the team and town to whom a permit is issued shall appear on each permit.

'Prior to the start of the tournament, the Outer Banks Association of Realtors shall provide the Nags Head Town Clerk with a list showing the team name or tournament official and the numbers of the permits issued to each.

'A pamphlet (to be provided by the Town) on Regulations Governing Beach Vehicular Traffic in the Town of Nags Head shall be supplied with each permit distributed by the Outer Banks Association of Realtors.

'Each permit shall be displayed on the inside front windshield on the passenger side of the vehicle, even if a normal Nags Head Beach Driving Permit is already displayed.

'The short-term beach driving permit MUST be in the possession of the team at all times. The permit is not transferable.

'The Town of Nags Head Beach Driving Ordinance is to be strictly enforced by the Nags Head Police Dept.

'Should the weather or high tide call for the closure of the beach or a section of the beach, the Town Manager will close the beach."

PUBLIC HEARINGS

 Public Hearing to consider request by Derek Hatchell on behalf of I.G. Holdings to amend the conditions associated with "Car Wash" as a Conditional Use within the C-2, General Commercial Zoning District

Town Attorney John Leidy introduced the Public Hearing to consider an amendment to the conditions associated with "car wash" as a conditional use within the C-2 General Commercial Zoning District. The time was 9:20 a.m.

Zoning Administrator/Dep Planning Director Kelly Wyatt summarized her staff report which read in part as follows:

"Mr. Derek Hatchell on behalf of I.G. Holdings, LLC, has submitted the attached zoning ordinance text amendment application, which, if adopted, would eliminate the need for an attendant to be present on-site during all hours of operation of a car wash.

'In the zoning text amendment application, the applicant has cited the desire to no longer require an attendant be present onsite as it is not necessary given that the car wash would be fully automated.

There is significant history with the allowance of an attended car wash as a use within the Town dating back to 1988 when the discussions first arose with the Planning Board. Below is a brief summary:

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- March 6, 1989 – The Board of Commissioners held the Public Hearing pertaining to “Car Wash” as a Conditional Use within the C-2, General Commercial Zoning District. Commissioners felt that the Planning Board’s concern of noise could be addressed by an on-site attendant however the concerns of litter and possible after hours activities could not be addressed. The Board of Commissioners voted to deny the request as presented and directed staff to return with a version of the amendment incorporating the requirement for an on-site attendant as well as additional storm water measures.
- July 3, 1989 - The Board of Commissioners began the Public Hearing, following staff’s presentation on the revised ordinance, public comment was taken. Significant revisions were proposed requiring re-advertisement of the proposed amendment. The Public Hearing was set for the Boards August meeting.
- August 7, 1989 – The Board of Commissioners adopted the text amendment which incorporated the requirement that the car wash have on on-site attendant.
- September 6, 1989 – Parking standards for car washes was discussed and later adopted.

June 21, 2016 Updated Information: Following requests made by the Planning Board at its May 17, 2016 meeting, numerous revisions have been made to the proposed ordinance to include:

- A site attendant must visit the site a minimum of two times daily to ensure proper operation.



- Security cameras must be installed to record activity in vulnerable locations.
- Hours of operation have been established, this is what the Board of Commissioners recommended in the initial amendment from October, 1988.
- A minimum setback of 50 ft. has been applied to any freestanding vacuums and other service areas adjacent to a residential use or district.
- Clarification on what the word "enclosed" represents and the need to comply with Town Architectural Design criteria.
- Clarification that the required buffer must be continual and opaque. The buffer requirement on this site would not be subject to the clustering and grouping of plantings afforded in other scenarios.

Staff would note that the applicant was provided a copy of the draft ordinance prior to inclusion in the packet for review and comment. The applicant has indicated that he is in agreement with the language except for the hours of operation. The applicant would request consideration for no specific limitation on the hours of operation.

STAFF RECOMMENDATION:

Based upon the history of discussion surrounding the previous Board's desires for any car wash to have an attendant on-site during all hours of operation, Planning Staff recommends denial of the proposed text amendment as presented.

Updated Staff Recommendation (June Planning Board): Staff continues to recommend denial of the proposed ordinance as amended. Staff does not believe that the 50 foot setback adjacent to residential zoning districts or uses is adequate to mitigate noise concerns based on the proposed use.

PLANNING BOARD RECOMMENDATION:

At their June 21, 2016 meeting, the Planning Board voted 5-2 to recommend adoption of the proposed zoning ordinance text amendment omitting the condition that the car wash maintains hours of operation."

Notice of the Public Hearing was published in the *Coastland Times* on Wednesday, July 20, 2016 and on Wednesday, July 27, 2016, as required by law.

Board discussion:

Comr. Ratzenberger questioned item (i) of the ordinance indicating that the car wash can only be located on property that fronts US 158 – where would the car wash have to be situated on that lot?

On behalf of the applicant, Albemarle and Associates engineer John DeLucia responded to Comr. Ratzenberger and stated that the reason for fronting US 158 is that the Planning Board did not want a car wash on the Beach Road – only on US 158. Mr. DeLucia said that they agreed with all Planning Board conditions except for the hours of operation – they would like 24 hours/day open for operation; there have been no problems with vacuum cleaners that are located at other locations; this is to be a state-of-the-art car wash that will meet all environmental and recycling standards; he said that staff contacted other locations and has heard of no issues; Mr. Hatchell has these businesses located in areas along the coast.

Comr. Demers asked how the security cameras would be utilized – John DeLucia said that areas that typically are vandalized, etc. are located inside buildings; those that can be seen from highways are

typically safer; Comr. Demers asked about safety of exterior areas – Mr. DeLucia said that it is no different than going to a gasoline station at night; Mr. DeLucia said that they wouldn't want thick vegetation to be able to block areas and he stated that most people will use the business during the daylight hours; Mr. DeLucia also reported that the Mr. Hatchell's other businesses are checked daily and trash emptied, etc. – it is dictated by each individual operation. Mr. DeLucia noted that there is one person dedicated to this task.

Comr. Ratzenberger asked where the developer is considering locating the car wash – Mr. DeLucia stated that several parcels along US 158 are being considered.

Mayor Edwards asked if there are any decibel readings available on car washes; Mr. DeLucia stated that unless you open the door to the equipment room, there shouldn't be an issue with noise.

Molly Harrison, Lakeside Drive resident; she stated that while she realizes the proposal is not site specific and it does sound like a nice facility, she has issue with a 24-hour open facility with no attendant that backs up to a neighborhood; she asked the Board to not adopt the amendment; having the business located in the Lakeside Drive area would make it even more difficult for residents to get out of their neighborhood – there are already issues because of the gasoline station; she suggested not a 24-hour facility, with an attendant, greater setbacks, and entrance off of US 158 and not via Lakeside Drive.

Comr. Cahoon confirmed with Ms. Wyatt that there is no definition of "areas of vulnerability" in the Town Code for location of security cameras.

Mr. DeLucia stated that multiple cameras will be located in the bays, driveways and any mischief on site will be picked up. He stated that the owners are very good with security camera placement at their facilities.

Mayor Edwards confirmed with Ms. Kelly that setback for the vacuum cleaners was not discussed by the Planning Board.

Mayor Pro Tem Walters asked if item (f) of the ordinance refers to vegetation or fencing? Ms. Wyatt said that the intent is to have vegetation but that fencing can be considered during the conditional use site plan review.

Comr. Ratzenberger spoke of the business possibly becoming nonconforming if an adjoining residential site modified its structure location.

There being no one else present who wished to speak, Attorney Leidy declared the Public Hearing closed at 9:38 a.m.

MOTION: Mayor Pro Tem Walters made a motion to adopt the ordinance to add "car wash" as a conditional use within the C-2 District as presented. The motion was seconded by Mayor Edwards.

Comr. Cahoon stated that if the ordinance moves forward, then changes need to be made re: security cameras, buffer yards, frontage and access only from US 158.

Mayor Edwards said that he would like the Planning Board to review setbacks from residential properties again and he would prefer to see hours of 9 to 9 since it abuts a residential neighborhood.

Comr. Ratzenberger said that he does not feel that 50' is adequate as the setback – decibels are the only things that count – he would also like to see the signage language clarified; he is okay with the business being open 24/7.

Mayor Pro Tem Walters stated that she is okay with the idea conceptually – she would like to clean up the definition of “areas of vulnerability”; fencing and plantings reduce sound; there are lots of businesses in the C-2 District that operate 24/7 – but consideration needs to be made for the nearby residences. She feels that the bottom line is that it is the C-2 Commercial District - she feels that a car wash would be a real asset for the community - she is not opposed to 24/7 hours of operation.

Comr. Demers said that he likes the idea of the business and feels it would be a good addition to the community; his primary concern is the personal vulnerability of those using the facility; buffering to consider the residential community, and traffic flow to keep traffic off the side streets; he would also like additional Planning Board review.

CONTINUATION OF MOTION: The motion to add “car wash” to the C-2 District, as presented, failed unanimously.

MOTION: Comr. Cahoon made a motion to send the proposed ordinance concerning the addition of “car wash” as a conditional use in the C-2 District back to the Planning Board - in light of the Board’s comments made today - which include the following:

- Review of setbacks/buffering in consideration of a nearby/adjoining residential community
- Review of placement of building(s) on site
- Review of traffic flow / access only from US 158
- Clean up/clarify signage requirements
- Define “areas of vulnerability”
- Review of personal vulnerability and location of security cameras
- Security cameras to cover the entire site
- Pros/Cons of operating 24/7 vs 9 to 9
- Review of decibel levels / sound of vacuum cleaners

The motion was seconded by Comr. Demers which passed unanimously.

Public Hearing to consider Preliminary Plat for Elliott Estates, Phase III, Lot 25 with request for subdivision waiver regarding access

Town Attorney John Leidy introduced/opened the Public Hearing to consider the preliminary plat for Elliott Estates, Phase III, Lot 25 with a request for subdivision waiver regarding access. The time was 10:30 a.m. He reminded Board members that they sit as a quasi-judicial body and must make a decision based on competent evidence and those presenting must be sworn by the Town Clerk. Attorney Leidy explained that Board members that had any contact prior to the hearing where details of this application were discussed must base their decision entirely on the facts/evidence presented today; if a Board member feels he cannot, he/she should recuse themselves. Comr. Cahoon pointed out that she was approached by one of the builders associated with this property and that she gave no opinion – she also noted that the information received would not affect her decision.

Sworn in by Town Clerk Carolyn Morris were: Steve Davenport, Ray Meekins, Mike Robinson; Kelly Wyatt, Andy Garman, and Kevin Zorc.

Notice of the Public Hearing was published in the *Coastland Times* on Wednesday, July 20, 2016 and on Wednesday, July 27, 2016, as required by law.

STAFF REPORT

TO: Planning Board
FROM: Kelly Wyatt, Deputy Planning Director/Zoning Administrator
Andy Garman, Deputy Town Manager/ Planning Director
DATE: September 20, 2016
SUBJECT: A proposed zoning ordinance text amendment to Town Code Section 48-866(c)(2), Hospital as a Conditional Use within the Village Attached Single Family Dwelling District.

SUBJECT OR MOTION(S):

1. Motion to recommend adoption or denial of a text amendment to Town Code Section 48-866(c)(2) to add detached medical office as an allowable use on a hospital site.

BACKGROUND:

Mr. Craig Leonard, architect with the East Group, has submitted the attached zoning ordinance text amendment on behalf of Outer Banks Hospital. If adopted, this amendment would create a new use of "detached medical office" as an accessory use and structure on a site with a principal use of Hospital.

The Outer Banks Hospital approached the Town in early September for a pre-application meeting to discuss the construction of a potential detached structure on the hospital site for the primary purpose of offering outpatient services such as physical therapy. It was during the staff review leading up to this pre-application meeting where it was noted that the Town Code sets forth a 100 foot setback for hospital buildings adjacent to any residential use. As originally designed by the East Group, this proposed building would be setback approximately 50 feet from a residential use (Old Nags Cove to the North).

Based upon this finding, the East Group, after conferring with planning staff, felt it best to submit a zoning ordinance text amendment request to reduce this setback given that the nature and intensity of the proposed building and use is much less than that of a hospital and would have no greater impacts than any other medical office within the Town. As noted in the text amendment application, the applicant states that this medical office would only provide outpatient services during normal daytime business hours to clients visiting for set periods of time for scheduled treatments.

As information and for the purpose of this text amendment the definition of medical office is as follows:

Medical office means a building or structure or portion thereof where persons receive outpatient medical examinations, treatments, and procedures from licensed practitioners. This definition shall include doctors and dentists offices, and the offices of any other licensed and/or certified health care providers.

STAFF RECOMMENDATION:

Staff submits that this is a reasonable request given that the setbacks for the original "hospital" use were likely established without consideration for smaller, detached accessory buildings such as this. Staff submits that the proposed use in relation to the hospital use does meet the criteria of an "accessory use" and, as such, a lessening of the setback is appropriate.

Stand-alone medical offices are currently allowed as a permitted principal use in the C-2, General Commercial Zoning District, the SED-80 Special Environmental District, and within the Village at Nags Head Commercial-1 District. While the setbacks for a medical office in the SED-80 District are significant due to the environmental sensitivity of the area, medical offices in the C-2, General Commercial District and Village Commercial-1 District are less than the proposed 50 foot setback.

Noting that this proposal for a detached medical office operating as an accessory use to a hospital is likely no different than that of a medical office operating in the general commercial district, staff would recommend approval of the proposed zoning ordinance text amendment as presented.

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES
OF THE TOWN OF NAGS HEAD, NORTH CAROLINA**

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 a comprehensive zoning ordinance (the "Town's Zoning Ordinance") and has codified the same as Chapter 48 of the Town's Code of Ordinances (the "Town Code"); and

WHEREAS, pursuant to N.C.G.S. § 160A-174 the Town may also enact and amend ordinances that define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the Town; and

WHEREAS, A text amendment was initiated by an applicant to allow detached accessory medical office buildings as an accessory use to hospitals with a reduced setback adjacent to residential areas.

WHEREAS, setbacks are designed to provide adequate transitions between different land uses and the proposed setback preserves the spirit and intent of the ordinance with respect to land use compatibility;

WHEREAS, the Town further finds that in accordance with the findings above it is in the interest of and contrary to the public's health, safety, morals and general welfare for the Town to amend the Town's Zoning Ordinance and Town Code of Ordinances as stated below.

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 ellipses ("...") shall remain as they currently exist within the Town Code.

ARTICLE III. Amendment of Zoning Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Town of Nags Head, North Carolina, that the Town Code shall be amended as follows:

PART I. That Section **48-866(c)(2), Hospitals as a Conditional Use in the Attached Single Family Dwelling District**, be amended as follows:

(c) Conditional uses. The following uses are permitted in the attached single-family district, subject to the requirements of this attached single-family district and additional regulations and requirements imposed by the board of commissioners as provided in article XIV of this chapter:

(2) Hospitals, provided that the following conditions are met:

r. Hospitals may have detached medical offices as an accessory use on-site provided the following conditions are met:

1. The building setbacks shall be:
 - i. From the US 158 right-of-way: 40 feet
 - ii. From any residential use: 50 feet
 - iii. From any commercial use: 50 feet

2. The maximum building height shall be 30 feet.

PART II. 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 ____ 2016.

Robert C. Edwards, Mayor
Town of Nags Head

ATTEST:

Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:

Town Attorney

Date adopted: _____

Motion to adopt by Commissioner _____

Motion seconded by Commissioner _____

Vote: _____ AYES _____ NAYS

DRAFT

ZONING AMENDMENT APPLICATION TOWN OF NAGS HEAD, NORTH CAROLINA

Applicant: The Outer Banks Hospital

Mailing address: 4800 South Croatan Highway, Nags Head, NC 27959

Explanation of request

Zoning Ordinance - Section(s): 48-866(c)(2).
Attach amendment in ordinance form.

Nature of request:

Amend the Zoning Ordinance text to establish requirements for development of buildings for outpatient services as an *accessory use* to a Hospital.

Reason for request:

The zoning rules that apply to Hospital buildings are appropriate for inpatient facilities that involve very specific access and safety considerations, and require appropriate consideration for adjoining properties.

The requirements in those zoning rules are overly restrictive for Hospital buildings dedicated to outpatient services. Such buildings would function in a manner similar to many other clinics and physician offices in Nags Head; open during normal daytime business hours to clients who visit for an hour or two of treatment.

The proposed text amendment would modify those requirements to be more consistent with rules that apply to the Town's other medical office developments.

Applicant: _____

Date: _____