



AGENDA
Town of Nags Head Planning Board
Nags Head Municipal Complex Board Room
Tuesday, February 18, 2020; 9:00 a.m.
- D R A F T -

- A. Call To Order
- B. Approval Of Agenda
- C. Joint Discussion With Board Of Commissioners
to Review Draft Flood Damage Prevention Ordinance Amendments
- D. Public Comment/Audience Response
- E. Approval Of Minutes
January 21, 2020 Planning Board Meeting
- F. Establishment Of Regular Meeting Dates For Calendar Year 2020

Documents:

[2020 SUBMITTAL DATES.PDF](#)

G. Action Items

- 1. Continued Consideration Of A Text Amendment
to the Unified Development Ordinance submitted by a property owner to expand the
principal sale items from outdoor stands to include reservations and tickets for
events/activities.

Documents:

[MEMO WITH ATTACH TO PB RE OUTDOOR SALES AMENDMENT FOR
TICKETS_2.13.2020.PDF](#)

H. Report On Board Of Commissioners Actions
February 5, 2020 BOC Meeting

Documents:

[FEB 5 2020 BOC ACTIONS.PDF](#)

I. Town Updates - As Requested

J. Discussion Items

- 1. Continued Discussion Of Regulation Of Large Occupancy/Event Homes

Documents:

[EVENT HOME PDF FOR PB.PDF](#)

2. Discussion Of Legacy Establishments/Structures

Documents:

[MEMO WITH ATTACH TO PB RE LEGACY ESTABLISHMENTS AND STRUCTURES_2142020.PDF](#)

3. Discussion Of Residential Stormwater Regulations

4. Discussion Of FY20-21 Planning & Land Use Work Plan

K. Planning Board Members' Agenda

L. Planning Board Chairman's Agenda

M. Adjournment

Town of Nags Head

Telephone: 252-441-7016

FAX: 252-441-4290

Planning and Development 2020 Submittal Dates					
	Tech. Review ¹	Planning Board	Board of Commissioners	Board of Adjustment ²	
Submittal Date	Meeting Date	Meeting Date	Meeting Date	Meeting Date	Deadline
December 19, 2019	January 7, 2020	January 21, 2020	February 5, 2020	January 9, 2020	December 10, 2019
January 16, 2020	February 4, 2020	February 18, 2020	March 4, 2020	February 13, 2020	January 7, 2020
February 13, 2020	March 3, 2020	March 17, 2020	April 1, 2020	March 12, 2020	February 11, 2020
March 19, 2020	April 7, 2020	April 14, 2020	May 6, 2020	April 9, 2020	March 10, 2020
April 16, 2020	May 5, 2020	May 19, 2020	June 3, 2020	May 14, 2020	April 14, 2020
May 14, 2020	June 2, 2020	June 16, 2020	July 1, 2020	June 11, 2020	May 12, 2020
June 18, 2020	July 7, 2020	July 21, 2020	August 5, 2020	July 9, 2020	June 9, 2020
July 16, 2020	August 4, 2020	August 18, 2020	September 2, 2020	August 13, 2020	July 14, 2020
August 13, 2020	September 1, 2020	September 15, 2020	October 7, 2020	September 10, 2020	August 11, 2020
September 17, 2020	October 6, 2020	October 20, 2020	November 4, 2020	October 8, 2020	September 8, 2020
October 15, 2020	November 3, 2020	November 17, 2020	December 2, 2020	November 12, 2020	October 13, 2020
November 12, 2020	December 1, 2020	December 15, 2020	January 6, 2021	December 10, 2020	November 10, 2020
December 17, 2020	January 5, 2021	January 19, 2021	February 3, 2021	January 14, 2021	December 15, 2020
January 14, 2021	February 2, 2021	February 16, 2021	March 3, 2021	February 11, 2021	January 12, 2021
Board of Commissioner Submittal/Meeting Dates may be obtained from Carolyn Morris, Town Clerk at 252-441-5508.					
* Planning Board Items are due by 1 PM on submittal date: site plan check-in takes about 15 minutes.					
* Digital version of submittal is required in addition to required paper copies.					
¹ Tentative dates - meetings subject to cancellation/change					
² Meetings scheduled as necessary					



MEMORANDUM

Town of Nags Head

Planning & Development Department

To: Planning Board

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

Date: February 13, 2020

Subject: Continued consideration of a text amendment to the Unified Development Ordinance submitted by a property owner to expand the principal sale items from outdoor stands to include reservations and tickets for events/activities.

OVERVIEW

As the Planning Board is aware, this proposed text amendment (the applicant for the amendment is Kate Creef, Assistant General Manager, on behalf of Outlets Nags Head) was discussed preliminarily at the Board's January 21, 2020 meeting. At that time, the proposal was to amend the UDO to allow "outdoor kiosks" for the sale of tickets and reservations for on-site and off-site recreational facilities. Mrs. Creef had explained to the Board that a vendor had approached the Outlets about the idea of having a kiosk located on the property to allow patrons to book charter fishing excursions, a concept which was believed would enhance the customers' shopping experience. Mrs. Creef indicated that there would be a preference to allow two outdoor stands (where the regulations only allow for one) and confirmed for the Board that the plan was to locate the kiosk in the terrace area.

Based on the discussion and feedback provided at the meeting, the applicant submitted an adoption ordinance for the proposed text amendment and markup of the relevant sections of the Unified Development Ordinance. Modifying the original proposal, the request is now seeking to amend Section 7.76.1 to expand the principal sale items allowed to be sold from outdoor stands to include "reservations or ticket sales," and to amend Section 7.76.2. to increase the number of outdoor stands allowed per site from one (1) to two (2).

BACKGROUND

The current version of the allowances and standards for *Outdoor Stands, Accessory to Shopping Center & Group Development* are the result of numerous changes over the course of the last ten (10) years; actions of note are as follows:

- The allowance of outdoor fresh produce stands as an accessory use to shopping centers was first established in mid-2009;
- In late-2009, an amendment was adopted to allow hotdog vending stands as an accessory use to shopping centers;
- In early-2010, an amendment was adopted to allow coffee vending stands as an accessory use to shopping centers;

Continued consideration of a text amendment to the Unified Development Ordinance submitted by a property owner to expand the principal sale items from outdoor stands to include reservations and tickets for events/activities

- In mid-2010, recognizing that one of each of the aforementioned stands could be permitted at any given shopping center, an amendment was adopted to limit the number of accessory outdoor stands at any shopping center site to one (1); additionally, the various stand uses were consolidated under a single use (Outdoor Stands);
- In late-2010, the Ordinance was amended to allow Italian ice and fudge sales;
- In early-2013 ice cream was added as an allowed sale item; additionally, in 2013, a request to expand the allowable number of stands from one (1) to (2) was denied; and
- The provisions were last amended in 2014 when the allowed locations for outdoor stands were expanded to allow as accessory to Group Development (aka Office/Retail Group Development).

POLICY CONSIDERATIONS

There are no direct policies concerning outdoor stands. However, certainly economic development objectives and policies encouraging and supporting small businesses and the viability of existing commercial properties are applicable, and need to be balanced with objectives and policies focused on maintaining the Town's character.

Generally, Staff believes that the request to allow the sale of tickets and reservations is consistent with applicable policies; however, Staff would suggest that the standards be clarified to require that the sale and advertisement of items be confined to stands. With respect to the number of allowed stands on any particular site, Staff would support a maximum of two (2) stands, with no more than one (1) stand selling fresh produce, hot dogs, coffee, ice cream or Italian ice, and/or fudge.

STAFF RECOMMENDATION

Staff recommends that the amendment be adopted with modifications to the standards to require that the sale and advertisement of items be confined to stands and to allow a maximum of two (2) stands, with no more than one (1) stand selling fresh produce, hot dogs, coffee, ice cream or Italian ice, and/or fudge. Additionally, it is suggested that Sections 7.76.3 and 7.76.4. also be amended to provide for a maximum stand area and any time limitations, respectively, for the sale of tickets and reservations; a limitation of 150 square feet and a time limitation consistent with produce stands are likely sufficient. Finally, Staff would recommend that the definition of Outdoor Stand, as follows, be amended consistent with the amendment of Section 7.76.1.:

Outdoor stand means an approved area where the sale of produce, hot dogs, coffee, ice cream or Italian ice, and fudge occurs from a cart or structure.

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

3.5.3. Action by the Planning Board.

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

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

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

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

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

3.5.4.1. Before an item is placed on the consent agenda to schedule a public hearing, the Planning Board's recommendation on each proposed amendment must be received by the Board of Commissioners. If no recommendation is received from the Planning Board within 30 days from the date when submitted to the Planning Board, the petitioner may take the proposal to the Board of Commissioners without a recommendation from the Planning Board. However, the Planning Board may request the Board of Commissioners to delay final action on the amendment until such time as the Planning Board can present its recommendations. No such limitations shall apply to applications or requests submitted by Town staff or any Town Board.

3.5.4.2. After receiving a recommendation from the Planning Board on a proposed amendment, the Board of Commissioners may proceed to vote on the proposed ordinance, refer it to a committee for further

study, or take any other action consistent with its usual rules of procedure.

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

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

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

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

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

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

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

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

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

Continued consideration of a text amendment to the Unified Development Ordinance submitted by a property owner to expand the principal sale items from outdoor stands to include reservations and tickets for events/activities

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. Zoning Amendment Application;
2. Proposed Ordinance; and
3. Markup of Section 7.76, Outdoor Stands, Accessory to Shopping Centers & Group Development

**ZONING AMENDMENT APPLICATION
TOWN OF NAGS HEAD, NORTH CAROLINA**

Applicant Kate Creef, Assistant General Manager, on behalf of Outlets Nags Head

Mailing address 7100 South Croatan Hwy Nags Head, NC 27959

Explanation of request

- Zoning Ordinance - Section(s)** _____
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

Request to allow reservation kiosks for on-site and off-site recreational activities as permitted use within retail shopping centers.

Reason for request

To enhance property use and customer shopping experience.

Kate Creef, Assistant General Manager, on behalf of Outlets Nags Head
Applicant
12/10/19
Date

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES
OF THE TOWN OF NAGS HEAD, NORTH CAROLINA PERTAINING TO THE
REGULATION OF OUTDOOR STANDS, ACCESSORIES TO SHOPPING
CENTERS & GROUP DEVELOPMENT**

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, an owner of the property within the Town of nags Head proposed the amendment of the Unified Ordinance to alter regulations for outdoor stands, accessory to shopping centers and group development; and

WHEREAS, the Board of Commissioners finds that these text amendments are consistent with the goals, objectives and policies of the Town’s adopted Comprehensive Plan, and that this action is reasonable and in the public interest, and is in the interest of and not contrary to the public’s health, safety, morals and general welfare for the Town to amend the Town’s Unified Development Ordinance 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 ellipsis (“...”) shall remain as they currently exist within the Town Code.

ARTICLE III. Amendment of the Unified Development Ordinance.

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

PART I. That **Section 7.76.1 and 7.76.2**, be amended as follows:

7.76.1 The principle sale of items at an outdoor stand shall be limited to either fresh produce, hot dogs, coffee, ice cream or Italian ice, ~~and~~ fudge, and reservations or ticket sales.

7.76.2 ~~Only one~~ Two outdoor stands shall be allowed per site. The stands shall not be required to be a permanent structure and may be located upon a trailer.

ARTICLE IV. Severability.

All Town ordinances or parts of ordinances in conflict with this ordinance amendment are hereby repealed. Should a court of competent jurisdiction declare this ordinance amendment or any part thereof to be invalid, such decision shall not affect the remaining provisions of this ordinance amendment nor the Unified Development Ordinance or Town Code of the Town of Nags Head, North Carolina which shall remain in full force and effect.

ARTICLE V. Effective Date.

This ordinance amendment shall be in full force and effect on the adopted effective date of the Unified Development Ordinance.

Benjamin Cahoon, 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

SECTION 7.76 OUTDOOR STANDS, ACCESSORY TO SHOPPING CENTERS & GROUP DEVELOPMENT.

Outdoor stands, accessory to shopping centers and group development, are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.76.1. The principal sale of items at an outdoor stand shall be limited to either fresh produce, hot dogs, coffee, ice cream or Italian ice, ~~and fudge~~ **and reservations or ticket sales**. The sale of any other items shall be incidental and limited to no more than ten percent of the display area or ten percent of sales.

7.76.2. ~~Only one~~ **Two** outdoor stands shall be allowed per site. The stands shall not be required to be a permanent structure and may be located upon a trailer. When located upon a trailer, skirting shall be installed around the perimeter to screen the wheels, axles and towing hitch from view.

7.76.3. The stand area, inclusive of display counters and awnings, shall not exceed four hundred (400) square feet for produce stands and shall not exceed one hundred fifty (150) square feet for hot dog, coffee, ice cream and Italian ice and fudge stands. Refrigeration units may be utilized within the stand area. The location of the stand on the site shall comply with minimum district yard regulations for principal use structures.

7.76.4. Produce stands shall be temporary and may be operated for a period of time not to exceed 180 days annually. The dates of operation shall be limited to between May 1 and November 1 each year. Hot dog, coffee, ice cream and Italian ice and fudge stands may be operated year round but shall not be left on the property overnight and must be removed daily.

7.76.5. All stands shall comply with applicable Dare County Health Department regulations and permitting requirements.

7.76.6. When located on a site with fifty (50) or more existing parking spaces, no additional parking spaces will be required. When located on a site with less than fifty (50) parking spaces a minimum of three (3) off-street parking spaces in accordance with parking regulations of this UDO shall be provided.

7.76.7. When the regulations contained in the subsection are in conflict with the general regulations of Town Code Section 12 Article III, Peddlers and Itinerant Merchants, the provisions of this UDO shall prevail.



BOC ACTIONS
WEDNESDAY, FEBRUARY 5, 2020

1. Call to order - Mayor Cahoon called the meeting to order at 9:00 a.m.

2. Agenda – the Board approved the Feb 5th agenda as presented.

3. Recognition

Police Chief Phil Webster introduced Police Officer Terrance Flaughter who was welcomed by the Board to Town employment.

Public Works Director Ralph Barile introduced Facilities Maintenance Technician Nehmias Cortez who was welcomed by the Board to Town employment.

Finance Director Amy Miller introduced Dep Finance Officer Brooke Norris who was welcomed by the Board to Town employment.

Public Works Director Ralph Barile introduced Sanitation Supervisor Keefe White who was congratulated by the Board for 25 years of service to the Town.

Town Manager Cliff Ogburn introduced Town Clerk Carolyn F. Morris who was congratulated by the Board for 25 years of service to the Town.

4. Jennette’s Pier - Executive Director Mike Remige presented the annual update on Jennette’s Pier with a powerpoint presentation which was well received.

5. Public Comment

Susie Walters, Nags Head resident; spoke concerning recyclables which are now being incinerated; she encouraged the Board to allow for incineration of recyclables to continue while more information is gathered.

Al Friedman, Nags Head resident; he participates in Special Olympics events each year; the closest polar bear plunge is in Virginia Beach; he asked the Board to consider bringing this event to this area.

Cheri Pain, Nags Head resident; she has operated a homeowners association management business for 30 years in the Town; she very much appreciates the Town which is shaped by the hard work of the Board and many other individuals, she asked the Board to continue the Town’s recycling program.

David Masters, Jr., Nags Head resident; he mentioned the possibility of the Board rescinding the roll-back trash carts ordinance and is aware there are a lot of issues with this subject; he urged the Board to take another look at this issue rather than striking the ordinance.

6. Consent Agenda – The Consent Agenda consisted of the following items:

Budget Adjustment #8 to FY 19/20 Budget
Consideration of Tax Adjustment Report

Request to advertise delinquent taxes
Approval of minutes
Resolution authorizing Town Mgr to execute DEQ grant contract for Islington Beach Access
Amendments to Consolidated Fee Schedule
Resolution updating Town officials with banking authority
Resolution clarifying Dare County Control Group / Town Oct 2015 Memorandum of Agreement
Ratification of actions from Board of Commissioners Jan 23-24, 2020 Retreat

The Board approved the Consent Agenda – with removal of agenda item #E-8 re: Resolution clarifying Dare County Control Group/Town Oct 2015 MOA - for consideration at the Feb 18th mid-month mtg.

7. Public Hearing – to consider a Vested Right Site Plan for the Outer Banks Hospital, 4923 & 4927 S. Croatan Highway, 4922, 4926 & 4928 Passage Way, submitted by Quible and Associates P.C. on behalf of Outer Banks Hospital; the application involves the demolition of the Urgent Care Facility and construction of 10,400 square foot addition to the existing Radiation Therapy building. Applicant is seeking a Conditional Use Permit to reduce the number of required parking spaces and modify certain parking requirements, and to rezone the properties at 4922, 4926 & 4928 Passage Way from SPD-C/SF-2 to SPD-C/Hotel District – The following motions were unanimously passed:

Motion #1 - To approve the request to rezone parcels located at 4922, 4926 and 4928 S. Passage Way from the SPD-C/SF-2 District to the SPD-C/Hotel District as presented.

Motion #2 – To approve the vested right site plan/application with the required four (4) findings of fact for conditional use permits.

Motion #3 – To approve the conditional use permit to reduce required parking and loading zone dimensions with five (5) findings of fact and three (3) recommended conditions.

8. Planning Director update – Several items were specifically addressed to include the Flood Prevention Ordinance – for discussion at the joint workshop with the Planning Board on Feb 18th; Planning Board request for feedback on regulation of large occupancy/event homes; and legacy options in the UDO for discussion at an upcoming Planning Board meeting.

9. Workforce Housing – the Mayor suggested that the Board take this report into consideration and come back with recommendations at a future meeting.

10. Lunch – The Board recessed for lunch at 11:55 a.m. and reconvened at 1 p.m.

11. Audit contract – the Board passed a motion to select Johnson, Mizelle, Straub & Murphy of Kitty Hawk as the Town’s auditor.

12. Town Attorney Leidy – he congratulated Town Clerk Carolyn F. Morris on her 25th anniversary with the Town.

13. Town Manager – Beach Nourishment - *Proposed Municipal Service District (MSD)* – The Board passed a motion directing staff to prepare the MSD Report (includes map, statement, and plan) to include the north end of Town (to Kill Devil Hills Town line) for discussion at the Mar 4th Board meeting.

14. Town Manager – Sanitation/Recycling

- *Consideration of modification to contract with Bay Disposal dated Feb 5, 2019 re: curbside recycling* – The Board passed a motion to continue the contract with Bay Disposal authorizing them to divert the recyclable materials to be incinerated until the end of this fiscal year.

Consideration of changes to winter sanitation/recycling schedule - It was Board consensus to make no changes to the recycling schedule at this time.

Consideration of ordinance to rescind Town Code Sec. 30-6 (e) Storage and removal of trash and recycling carts - Town Manager Ogburn asked for additional time to evaluate/research the rescinding of the ordinance requiring the roll back of trash carts – for review at the Mar 4th Board meeting.

15. Comr. Renée Cahoon – Workforce Housing – she thanked staff for the work already done – she suggested to not expend any more money until additional details are known concerning how the money will be spent.

16. Comr. Brinkley – he thanked Susie Walters and Cheri Pain who spoke today expressing interest in maintaining the recycling program. Comr. Brinkley also thanked Al Friedman for speaking about the Special Olympics - Town Manager Ogburn said he would follow up.

17. Comr. Fuller – Staff was asked to follow-up on the issue mentioned during today’s discussion on the Outer Banks Hospital facility site plan to make sure La Fogata Restaurant has adequate parking after renting 11 spaces to the Hospital.

18. Mayor Cahoon – CIP/Budget Workshops – the schedule was approved as follows:

CIP Workshop / Continuation if needed	Mar 25 th - 9 am / Apr 8 th – 9 am
Presentation of Manager’s Recommended Budget	May 6 th - 9 am
Budget Workshop / Continuation if needed	May 13 th - 9 am / May 27 th – 9 am
Public Hearing (PH)	Jun 3 rd - 9 am
Budget Workshop (w/PH comments incorporated)	Jun 10 th - 9 am
Adoption of Budget (mid-month meeting)	Jun 17 th - 7 pm

Comr. Brinkley will not be available for the Mar 25th workshop; Comr. Renée Cahoon will not be available for the Apr 8th workshop. The Soundside Boardwalk item is to be included on a Board meeting agenda for discussion prior to being considered at the CIP Workshop.

19. Mayor Cahoon - Envisioning the future of Nags Head – Staff is to include this item under the Mayor’s agenda as a standing item for each upcoming Board meeting.

20. Mayor Cahoon – He noted that the Urgent Care Facility that is to be demolished – from today’s Outer Banks Hospital site plan discussion – was a bldg. he worked on as architect many years ago.

21. Mayor Cahoon – He shared that he would be out of town tomorrow and Friday (Feb 6-7). Mayor Pro Tem Siers will be available if needed.

22. Mayor Cahoon – He reported that next week (week of Feb 9-15) he may be in Puerto Rico assisting Emergency Management with hurricane damage inspection.

23. Adjournment - The Board recessed to a Joint Workshop with the Planning Board on Feb 18th at 9 am – The workshop will be followed by a Board mid-month mtg at 1 pm. The time was 2:11 p.m.



MEMORANDUM

Town of Nags Head

Planning & Development Department

To: Planning Board

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

Date: February 14, 2020

Subject: Discussion of Event Home Regulations

Following the Planning Board's January 21, 2020 discussion on large occupancy/event homes, Planning Staff provided the Board of Commissioners with a brief memo and update at their February 5, 2020 meeting requesting guidance on how to proceed. The Board of Commissioners noted that event homes had been a discussion at their most recent retreat and that public safety, noise, and off-site impacts, such as parking, were the primary concerns noted with regard to large events being held within single-family residential dwellings.

It was the consensus of the Board of Commissioners that the Planning Board and Staff continue to move forward with discussion on the regulation of such events. Additionally, the Board of Commissioners noted that large occupancy homes are a concern of many municipalities within Dare County and recommended that Staff work jointly with the other towns to consider how best to regulate occupancy. Specifically, regulations that the Town of Kill Devil Hills has discussed related to sprinkler protection, increased buffering, and vehicle stacking within the drive aisle were of interest. Staff would submit that these two items might best be handled separately, as the Board can currently proceed with developing regulations related to events; however, the consideration of additional restrictions on large occupancy homes requires additional time and coordination.

With regard to the regulation of events being held within single-family dwellings within the Town, staff would recommend consideration be given to developing criteria similar to that of the Town of Duck's "Wedding Event Registration Policy". You can review this information here: <https://www.townofduck.com/getting-married-in-duck/> and a copy of the *Wedding Related Event Registration* is attached. In short, if a wedding-related event in the Town of Duck involves more than 50 people you are required to complete a registration form and return it to the Town within 30 days in advance of the event. The form is circulated to neighborhood associations, the property manager or owner of the proposed venue, and the Town of Duck Police and Fire Departments in order to ensure that they are aware of the event plans and also so that they contact can be made prior to or during the event should it be necessary. As part of the registration process, applicants are provided the Towns regulations for signage, noise and trash removal. Additionally, applicants must demonstrate that sufficient onsite parking is provided for the event. If unable to do so any need for the use of off-site parking must be accompanied by the proper permissions to utilize that parking facility.

Staff would recommend that consideration be given to requiring this registration when any proposed event is intended to attract 50 or more attendees at any single-family residential dwelling within the Town, not simply wedding-related events. Additionally, instead of adopting a policy, Staff would recommend that this be considered as amendment to the Town Code, likely within Chapter 4, *Amusements, Entertainments, Mass Gatherings and Commercial-Outdoor Recreational Uses*.

Planning staff will be available for additional discussion with the intention to bring forward a draft amendment to the Town Code for consideration at the Planning Board's March 17, 2020 meeting.



Town of Duck
Wedding-Related Event Registration Policy

The qualities that make Duck a great place to live and vacation also make it an attractive location for weddings and special events. Large, well-appointed rental homes can be an ideal venue for large parties. It is important to remember that these homes are located in residential neighborhoods and these events, if not properly managed, can disrupt the quality of life for neighbors and other members of the community. The Town of Duck's economy is tourism based, and it is the position of the Town to encourage and facilitate properly planned events that are cognizant of residents, businesses, and other visitors. For this reason, Duck is asking event planners to fill out the attached form which documents the measures that will be taken to reduce event related impacts such as noise, parking, signage, and trash removal.

If you are planning a wedding-related event in the Town which involves more than 50 people, please fill out the attached form and return it to the Town of Duck Town Hall 30 days in advance of the event. This form will be circulated to neighborhood associations, the property manager or owner of the proposed venue, and the Town of Duck Police and Fire Departments in order to ensure that they are aware of your event plans and also so that they can contact you prior to or during the event, should this be necessary.

The Town of Duck's regulations for signage, noise, and trash removal can be found on the Town's website at www.townofduck.com and are referenced on the registration form. Please note that these regulations remain in effect at all times and failure to comply with Town regulations could result in penalties or fines as well as the possibility of event disruption or termination. Also, please note that the Duck Police Department will be routinely monitoring conditions during the course of the event, specifically to preempt issues related to noise and parking.

For more information or questions regarding the Wedding-Related Event policy, please call the Department of Community Development at (252) 255-1234 or visit the Town's website at: www.townofduck.com/planningzoning.htm.



WEDDING-RELATED EVENT REGISTRATION

Registration submission required 30 days in advance of an event.

Submission Date: _____

PLEASE DO NOT LEAVE ANY BLANKS (Mark N/A as appropriate & use additional sheets if necessary).

A. Contact and Event Information:

Date(s) of Event #1: _____ Time(s) of Event: _____

Event #2: _____

Event #3: _____

(Events may include wedding ceremony, reception, rehearsal dinners, brunch, etc.)

Event(s) will be held on private property at the following location/address:

Registrant Name (s): _____

Email (please print clearly): _____

Home Phone: _____ Cell Phone: _____

Address: _____

Name, cell phone & email of responsible party or wedding planner on-site & available on the day of the event: _____

(Note that the responsible party should be someone who is readily accessible with this cell phone on his or her person during the event in case the Town should need to make contact regarding noise, trash, parking, or similar issues)

Number of participants expected: _____

Neighborhood Association Name/Contact/Phone: _____

Property Management/Realty Firm Name/Contact/Phone: _____

Rental Property Name and Rental House Number: _____; Or,
Property Owner Name/Address/Phone if property is not in a rental program:

B. Parking/Traffic Flow:

Cars may not be parked on the side of the road in Duck. If you plan to use an off-site location for private parking, please demonstrate that you have sufficient permission to use this facility. Please describe your parking plan (i.e. use of shuttle buses, person to direct traffic, use of other parking facilities, etc.): _____

C. Sound/Noise:

Please note that Duck has a noise ordinance that is in effect at all times.

What kind of sound system/amplification/music will be used?

DJ Band House Sound System Other (please describe): _____

What will be the hours of operation for the sound system? _____

Will the sound system be located outside of the building? Yes No

D. Trash Collection/Removal:

Trash Collection is curbside on Monday and Friday from May 1st to September 30th. The remainder of the year trash collection is on Mondays. Recycling is curbside on Mondays. Please describe your plan to remove overflow trash from your event (i.e. obtain extra trash receptacles, to be handled by rental company etc.): _____

E. Signage and Decorations

Signs, balloons, streamers and similar items are not permitted within the rights of way along NC12 and side streets. Please limit decorations (no more than three days duration) to the property where the event is being held and note that the property line is generally 15 feet or more back from the paved portion of the right of way.

Please describe what signage/decorations you are proposing to use for your event:

With the signature below, the registrant indicates that (s)he has read and understands the Town of Duck Registration Policy for Wedding-Related Events and will comply with this Policy.

You are strongly urged to obtain approval from the appropriate homeowner association before your event(s). Failure to do so could result in legal action by the applicable homeowner association to enforce their covenants. Your signature on this application indicates that you understand that the Town of Duck does not enforce or consider the effect of neighborhood covenants when reviewing wedding related event registration applications.

Registrant Signature

Date

The Town of Duck will distribute this information to:

Town Manager
Chief of Police
Fire Chief

Property Owner or Manager
Neighborhood Association
Property Owner or Manager of Off-Site
Parking Facility (if applicable)

If you have any questions regarding event registration or this form, please contact the Director of Community Development via email at info@townofduck.com or by phone at 252-255-1234.

Please submit this form at least thirty days in advance of the event via email to the address above, via fax at 252-255-1236, or via mail to:

ATTN: Wedding Event Registration
Town of Duck
P.O. Box 8369
Duck, NC 27949

The Town will send an acknowledgement email or letter so that you know the registration form has been received.

Please Accept Our Best Wishes for a Beautiful and Safe Wedding Event!



MEMORANDUM

Town of Nags Head

Planning & Development Department

To: Planning Board

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

Date: February 14, 2020

Subject: Discussion of Legacy Establishments/Structures

OVERVIEW

As noted in my Director's Report memo to the Board of Commissioners and Planning Board, dated January 30, 2019, given recent expressed interest in the future of the Blue Heron Motel at 6811 S. Virginia Dare Trail and the limitations imposed by Town Code requirements on the evolution of the current hotel use of the property, Staff intends to begin considering Code amendments that advance Comprehensive Plan policies valuing the preservation of legacy business, establishments, and structures. Staff anticipates that discussion at the Planning Board's February 18, 2020 meeting will be an initial discussion of options.

POLICY CONSIDERATIONS

- One of the Town's principal goals, as established in the Comprehensive Plan, is to "Plan for orderly and sustainable growth and redevelopment," and an identified objective to attain this goal is the "Preservation and maintenance of legacy commercial businesses.
- As used in the Comprehensive Plan, at least within the context of *Character Areas*, legacy establishments, structures, or locations are those which "contribute to the overall sense of place or tell the story of Nags Head's past. These establishments, structures, or locations often remind you of the past and are nostalgic."
- Legacy establishments are particularly noted as adding to the character of the Whalebone Junction Character Area, and specifically the Whalebone Junction Core, where it is noted that "flexibility should be given to legacy type establishments for renovations as a way to retain the character of area while allowing the establishment to remain viable in the market."
- Legacy businesses are also referenced with respect to the Corridors Character Area, and specifically for the NC 12 and SR 1243 corridors, where it is noted that one of the future desires is to "provide flexibility for existing legacy businesses to renovate to help keep the character of Beach Road."

- The Land Use Element of the Comprehensive Plan, and the discussion of Incentives/Design Flexibility with respect to Site Development Characteristics, provides an overview of the issue and general solution, as follows:

The town has taken recent steps to preserve older legacy businesses and encourage the retention of these structures. There has been a regulatory shift with regards to nonconforming properties (properties which met zoning regulations at the time they were developed but are not consistent with regularity changes that have occurred). Essentially, non-conformity regulations have been modified to allow continued improvements to these older properties. The regulations are primarily designed to restrict additional development of unwanted land uses. The town's position is to allow continued use and improvement to nonconforming properties.

- The section on Legacy Businesses under Local Business Development, as contained within the Economic Development and Tourism Element of the Comprehensive Plan, is attached. Specific policies and actions are as follows:

EC-7 Recognize the role and importance of the look and feel of legacy development in creating the distinctive heritage, unique lifestyle, and family beach character that is central to the town's vision.

EC-7a: Develop more specific criteria for legacy businesses, based on research and data of existing legacy type buildings.

EC-7b: Inventory, research, and map businesses that fit within the legacy business criteria.

EC-7c: Develop incentives to encourage the preservation of commercial floor space.

EC-7d: Explore ways to aid in the development of cottage courts.

ISSUE AND OPTIONS

Generally, as referenced above, many legacy establishments and structures have been rendered nonconforming, either with respect to the use no longer being allowed in the zoning district in which the property is located or because of standards or requirements changing, or due to both circumstances. Nonconforming status is, by its nature, limiting; Staff would recommend that the Board review Article 5, *Nonconformities*, of the UDO https://www.nagsheadnc.gov/DocumentCenter/View/2771/Article-5_Nonconformities, and specifically Sections 5.3, *Nonconforming Structure with Conforming Use*, 5.4, *Nonconforming Site and Parking Areas*, 5.5, *Nonconforming Use of Land*, and 5.6, *Nonconforming Use of Structure*. It is helpful to consider that the general principle with respect to nonconformities is that, over time, the nonconforming uses or conditions cease, evolving to conforming uses or conditions. This effect would therefore seem to be inconsistent with the intent of the goals, objectives, policies, and actions contained in the Comprehensive Plan which support the retention of legacy establishments and structures and warrants consideration.

The conditions discussed above were the basis for the adoption of provisions in 2015 contained in Section 7.2.14 (attached) pertaining to nonconforming cottage courts. A similar approach could be taken with respect to legacy businesses and structures. Alternatively, an overlay zoning district approach could be taken, perhaps applied in a limited geographic manner and/or to properties meeting defined characteristics. Staff can expand on the pros and cons associated with these approaches at the Board's meeting.

Regardless of the approach, Staff does agree with the recommended actions of the Comprehensive Plan that it will be necessary to define and develop specific criteria as to what constitutes a legacy business or structure, and to then inventory and map properties that meet those definitions and criteria; however, Staff also believes that it is important to be proactive and take an iterative approach, developing a framework wherein applicable properties and uses can be added over time, as warranted.

STAFF RECOMMENDATION

At least for this initial discussion, Staff would suggest that it would be helpful for the Board to discuss perspectives with regard to what does and does not constitute a legacy business or structure, what are the defining characteristics, and what businesses or structures typify the term.

Attachments:

1. B. Legacy Businesses, of 3.4, *Economic Development and Tourism*, and 3.4.3, *Local Business Development*, of the Comprehensive Plan; and
2. Section 7.2.14, *Nonconforming Cottage Courts*



B. Legacy Businesses

Nags Head's vision statement places a great emphasis on the town's legacy. The vision emphasizes preserving and protecting the Nags Head character, tourism based economy, and sense of place; "We uphold our legacy by protecting and promoting our small town character that includes a sustainable local economy based on family vacation tourism, a high quality beach experience, and small, locally owned businesses."

During the community engagement portion of the plan, the Advisory Committee recognized that many of the small businesses contribute to the sense of place, quality of life, and high quality visitor experience within the town. The committee referenced these establishments as legacy businesses and described them as nostalgic or a reminder of the past. They conveyed the idea that life here was different, and helped to tell the story of Nags Head's past.

The Advisory Committee further identified that legacy businesses typically have the following characteristics:

- The architecture is varied but the overall size and scale of the building is small and blends within the surrounding neighborhood.
- The building is low scale often with only one or 1 ½ stories.
- Multiple small buildings may be located on the same property with a mix of residential and business uses. However, the Structures appear residential.
- The buildings are set in close proximity to the road.
- Parking is directly adjacent to the building or wraps the building.
- Restaurants often have walk up windows with outdoor seating.
- The area is highly walkable and businesses often have amenities such as outdoor seating and bike racks that cater to pedestrians and cyclists.
- Structures with legacy characteristics were typically constructed prior to 1980.
- Dining and retail establishments with legacy characteristics in Nags Head range on average between 3,000-5,000 square feet in size.

Further analysis and study should be completed to further define and preserve legacy businesses in the town. Additionally, this information can be used to encourage future development to construct similar to legacy type structures.

Since 2002, the town has seen a number of small, local businesses close, many along NC 12. These are being converted into residential development. The 2010 Land Use Plan recognizes this same concern but also points to businesses relocating to US 158 or going out of business due to large chain or "big box" stores. This is concerning since the Visitor's



Survey 2014-2015 indicates that 52.3% of respondents rank dining at restaurants unique to the area at 4th (out of 32) in the activities they participated in during their stay.

The town has made great strides and forward progress in the last two years working with local business owners to identify opportunities and constraints to their success and how the town can be a part of that. However, there are still policy questions related to retaining and maintaining legacy businesses in the long term that should be vetted. Preservation and upkeep of these legacy establishments is crucial in preserving the small town character that is central to the town's vision.

POLICIES & ACTIONS

- EC-5 Direct new commercial growth into neighborhood commercial nodes, activity centers, or areas currently zoned for commercial development with emphasis on reuse of existing structures.
- EC-6 Support and foster small, local businesses that preserve and uphold the vision and legacy of the town.
 - EC-6a: Continue to work with the Local Business Committee to further identify and remedy regulatory barriers for opening and operating businesses.
 - EC-6b: Develop and map an inventory of local businesses representing each sector of the town's economy.
 - EC-6c: Develop regulatory flexibility that allows existing small, local businesses to upgrade and maintain their facilities in order to remain relevant and competitive in the market.
 - EC-6d: Evaluate the impact of town processes, related to zoning and permitting, on businesses and streamline to meet the town's needs while supporting business investment.
 - EC-6e: Expand the availability of town services available on-line to better meet the needs of the businesses community.
 - EC-6f: Provide technical assistance through workshops, educational materials, or web based media to educate business owners on town processes and regulations related to owning and maintaining a business.
 - EC-6g: Develop a branded wayfinding, safety, and information signage plan to identify types and locations of signage for pedestrians, cyclists, and vehicles. Install appropriate signage. Signage should enable visitors to locate existing town parks, sound and beach access points and trailheads.



POLICIES & ACTIONS

- EC-7 Recognize the role and importance of the look and feel of legacy development in creating the distinctive heritage, unique lifestyle, and family beach character that is central to the town's vision.
 - EC-7a: Develop more specific criteria for legacy businesses, based on research and data of existing legacy type buildings.
 - EC-7b: Inventory, research, and map businesses that fit within the legacy business criteria.
 - EC-7c: Develop incentives to encourage the preservation of commercial floor space.
 - EC-7d: Explore ways to aid in the development of cottage courts.
- EC-8 Enhance economic health and increase employment opportunities through business retention and expansion.
 - EC-8a: Partner with the Outer Banks Chamber of Commerce to research and conduct discussions with local, small business owners in order to better understand factors contributing to the sale or loss of businesses.
 - EC-8b: Coordinate with the Outer Banks Chamber of Commerce to offer education and training for local, small business owners on succession planning.

7.2.9. Off-Street Parking and Loading Facilities.

Individual units shall have a minimum of two (2) parking spaces. Parking spaces for each dwelling unit shall be provided so as not to interfere with the shared accessway or with the access of emergency or service vehicles to the entire property. Shared parking areas may be utilized to accommodate the total parking requirements for the development. Parking spaces and drive aisles shall not be located closer than five (5) feet to side or rear property lines. Parking spaces shall not be located with direct access from the right-of-way.

7.2.10. Refuse and Recycling.

Cottage courts shall provide a suitable location for a dumpster as determined by the UDO Administrator. Dumpster areas shall be appropriately screened and shall not be located in the required front yard of the property.

7.2.11. Pools.

Cottage courts may have one community pool serving all of the units on the property. Individual units may not have pools.

7.2.12. Utility Meters.

Utility meters of any type for individual units are prohibited.

7.2.13. Management.

Cottage courts shall operate under a single, unified management operation which arranges for reservations and attends to guest needs. There shall be a uniform key entry system operated by management staff.

7.2.14. Nonconforming Cottage Courts.

Cottage courts which do not conform to the definition of "cottage court", contained in Appendix A Definitions, and also to the provisions of this section may continue, subject to the following provisions:

7.2.14.1. Existing individual dwelling units in a nonconforming cottage court may be replaced provided that replacement structures conform to the provisions of this section or do not increase the degree of structure or site nonconformity.

7.2.14.2. All replacement, substantially improved, and substantially damaged cottage court units shall conform with the provisions of Article 11, Part III, Flood Damage Prevention.

7.2.14.3. For the purpose of this section, structures will be considered individually when determining thresholds for repair, maintenance and destruction.

7.2.14.4. No existing individual dwelling unit in a nonconforming cottage court shall be enlarged, extended, moved or structurally altered, except as provided below:

7.2.14.4.1. For lots abutting the Atlantic Ocean or Roanoke Sound, individual dwelling units in a cottage court may be moved in cases where such structures are determined to be in imminent danger of collapse, as defined by CAMA, as a result of erosion by wind or water, provided that such movement does not increase the degree of nonconformity of

ARTICLE 7. SUPPLEMENTAL REGULATIONS

the structures in any way. When utilizing this provision, a minimum ten-foot separation shall be maintained between individual structures. All structures when moved shall adhere to the minimum setback requirements prescribed in this section.

7.2.14.4.2. Minor modifications to a nonconforming cottage court dwelling unit or cottage court site may be approved administratively by the UDO Administrator or his/her designee. Minor modifications may include the addition of detached storage sheds, not to exceed 150 square feet in area, on-grade patios, decks, porches, driveway or parking modifications, or other additions not involving an increase or expansion of the habitable area of existing cottage court dwelling units.

7.2.14.4.3. Major modifications to a nonconforming cottage court dwelling unit or cottage court site, may be approved by the Nags Head Board of Commissioners through the conditional use process as set forth in Section 3.8, Conditional Use Permits. Major modifications include any proposal which will result in a net increase in habitable area of nonconforming cottage court units.

7.2.14.4.4. All improvements must meet the dimensional requirements of the district in which they are located. When a lot coverage nonconformity exists on a cottage court site, improvements may be allowed as long as there is no net increase in overall lot coverage. All other nonconformities shall be regulated in accordance with Article 5, Nonconformities.

7.2.14.5. On any individual dwelling unit in a nonconforming cottage court, work may be done on ordinary repairs, or on repair or replacement of nonloadbearing walls, fixtures, wiring or plumbing.

7.2.14.6. If an individual dwelling unit in a nonconforming cottage court becomes dangerous to life, destroyed or unlawful due to lack of repairs or maintenance, the building inspector shall condemn the structure in accordance with G.S. 160A-426, and the structure may thereafter be restored, repaired, rebuilt or replaced in conformity with the regulations of this UDO and any other applicable federal or state regulations.

7.2.14.7. Nothing in this UDO shall prevent the strengthening or restoring to a safe condition of any individual dwelling unit in a nonconforming cottage court or part thereof declared to be dangerous to life by any official charged with protecting the public safety, or upon order of such official when he has determined that there is a clear and immediate danger to the public safety.