AGENDA
Town of Nags Head Planning Board
Nags Head Municipal Complex Board Room
Tuesday, March 17, 2020; 9:00 a.m.
- D R A F T -

A. Call To Order

B. Approval Of Agenda

C. Public Comment/Audience Response

D. Approval Of Minutes
February 18, 2020 Planning Board Meeting

Documents:

FEBRUARY 18 2020 DRAFT MINUTES.PDF

E. Action Items

1. Consideration Of A Text Amendment
to the Unified Development Ordinance submitted by Megan Dixon and Kim Cowen to add the use "Learning Center" as a permitted use within the C-2, General Commercial Zoning District.

Documents:

TUTORING_LEARNING CENTER TEXT AMEND PDF.PDF

2. Consideration Of Numerous Text Amendments
to the Unified Development Ordinance as it pertains to the updated flood maps and update of the flood damage prevention Ordinance.

Documents:

FLOOD DAMAGE PREVENTION ORDINANCE_PB PACKAGE_ 3.13.20_ REDUCED SIZE.PDF

F. Report On Board Of Commissioners Actions
March 4, 2020 BOC Meeting

Documents:

MAR 4 2020 BOC ACTIONS.PDF

G. Town Updates - As Requested

H. Discussion Items

1. Continued Discussion Of Regulation Of Events Within Residential Dwelling Units

2. Continued Discussion Of Large Occupancy Homes

   Documents:

   LARGE RESIDENTIAL OCCUPANCY PDF.PDF

3. Continued Discussion Of Legacy Establishments/Structures

   Documents:

   MEMO WITH ATTACH TO PB RE LEGACY ESTABLISHMENTS AND STRUCTURES_3.13.2020.PDF

4. Continued Discussion Of Residential Stormwater Regulations

   Documents:

   MEMO WITH ATTACH TO PB RE STORMWATER_3.13.2020.PDF

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

I. Planning Board Members' Agenda

J. Planning Board Chairman's Agenda

K. Adjournment

Town of Nags Head
Planning Board
February 18, 2020

The Planning Board of the Town of Nags Head met in regular session on Tuesday, February 18, 2020 in the Board Room at the Nags Head Municipal Complex.

Planning Board Chair Megan Vaughan called the meeting to order at 9:00 a.m. as a quorum was present.

Members Present

Megan Vaughan, Molly Harrison, Meade Gwinn, Megan Lambert, Gary Ferguson, David Elder

Members Absent

Kristi Wright

Others Present

Cliff Ogburn, Andy Garman, Michael Zehner, Kelly Wyatt, Holly White, Cory Tate, Lily Nieberding, Margaux Kerr, David Ryan

Approval of Agenda

There being no changes to the agenda, Meade Gwinn moved that it be approved as submitted. David Elder seconded the motion and it passed by unanimous vote

Joint Discussion with Board of Commissioners to review Draft Flood Damage Prevention Ordinance Amendments

Chair Vaughan called for a motion to enter into a joint meeting with the Board of Commissioners to review and discuss the draft flood damage prevention ordinance amendments. Molly Harrison so moved, Gary Ferguson seconded, and the motion passed by unanimous vote.

Planning Director Michael Zehner introduced the item to the Boards.

The main objective for discussion at this joint meeting would be to review and discuss the draft Flood Damage Prevention Ordinance, along with updated building height measurement and fill provisions, to be considered in concert with the updated F.I.R.M. covering the Town.

Mr. Zehner noted that the current flood maps were adopted in 2006, the new Flood Maps must be adopted before June 19, 2020. For the Town to remain in the National Flood Insurance Program (which offers federally backed flood insurance to homeowners and disaster assistance to the Town) the Town must adopt the Preliminary Flood Maps.

In order to stay on schedule, it will be important that staff incorporate in any needed changes into the draft and bring back the draft Ordinance for consideration at the March 10th Planning Board Meeting.

Mr. Zehner explained that most of the ordinance is based on the model which the Town does not have a lot of discretion; but there are sections that provide for local preferences, more stringent than the model. Mr. Zehner noted that in addition, there are other things that are options that Staff would like to receive direction from the two Boards so Staff will have a more refined draft to present to the Planning Board.

Mr. Zehner then turned over the presentation to Principal Planner Holly White so she could provide the Boards with an overview of the proposed changes to the draft Flood Damage Prevention Ordinance.

Ms. White noted that specific items for discussion include the addition of language to allow for the creation of the Local Elevation Standard (LES); LES and Regulatory Flood Protection Elevations (RFPE) and the Optional language.

Ms. White explained that the preliminary flood maps (F.I.R.M.) which were released in June of 2016, revealed that many areas of the Town would be removed from the Special Flood Hazard Area. Additionally, the Base Flood Elevations had been significantly reduced in areas remaining in the Special Flood Hazard Area. The F.I.R.M. depicts impacts from storm surge for the 1% (or 100-year) and .2% (500-year) flood zones; however, Staff does not believe that the F.I.R.M. accurately represents risks associated with rainfall flooding.

Some of the major changes to the F.I.R.M. include: fewer VE and AE zone properties; an overall increase in X zone properties town wide, even on the oceanfront; removal of causeway properties from VE zone; reduction of Base flood elevations in AE zone (most new BFE's are now 4'or 5', formerly 8'-10'); modification of Base flood elevations throughout entire town; and the addition of AO zones west of primary frontal dune.

Due to concerns raised by many with regards to the lowering of standards and reductions of BFE, Staff worked with planning staff from Dare County and the other municipalities as well as the Outer Banks Home Builders Association to develop a Local Elevation Standard ("LES").

The proposed LES would create an elevation requirement for properties east of NC12 of 12' and west of NC12 of 10'.

Ms. White confirmed for the Board that the definition does not use the word "Freeboard" however Staff is still trying to determine if that language is needed for CRS purposes. Ms. White further explained that the LES is a "freeboard" in its own right, because the Town is regulating to a much higher standard than the zone requires.

Ms. White discussed lateral additions and how they would be affected by LES. Ms. White explained that lateral additions, greater than 10% of the total floor area on the level on which the addition is located, shall have the reference level elevated to or above the RFPE.

Ms. White then reviewed the Optional language for the Board and explained that a non-conversion agreement is something that a property owner would sign, prior to the issuance of a building permit, declaring that the area below the lowest floor shall not be improved, finished or otherwise converted to habitable space.

Ms. White confirmed that the Town would continue to use the standard elevation certificate forms. Chief Building Inspector Cory Tate noted that the Town is considering creating a town specific V Zone Certification form that would include certification language unique to coastal areas for pools, etc.

Ms. White then discussed how Height and Fill are affected by the proposed ordinance. She explained that the way height is measured is not changing. Ms. White and Mr. Zehner confirmed that height is measured from finished grade (after fill).

The Boards then discussed height and how it's measured, and the where and how much fill is or is not allowed. Ms. White and Mr. Zehner explained that fill less than 2' would only be allowed for landscaping, drainage, parking, pool decks, and patios. No structural fill is allowed in V flood zones. If fill was greater than 2', an analysis would be needed by an engineer. The Boards further discussed how fill is relative to height and where height is measured from when fill is included. Staff explained that height is measured from finished grade (after fill) except in the special flood hazard areas east of NC 12, where height is measured 18" above highest, undisturbed finished grade or "free of obstruction" directly beneath the structure. Mr. Zehner noted that the way height is measured is not changing and that the proposed language does not penalize property owners for meeting flood regulations.

Mayor Cahoon indicated that there has been a separate discussion on fill that should be concluded soon. Mayor Cahoon noted that the maps and flood ordinance will be adopted ahead of the fill ordinance. Staff and the Board will need to remember when the fill ordinance is adopted that the flood ordinance and height measurements will need to be consistent between the ordinances.

Mayor Cahoon recapped the major changes to the ordinance: 1)Two elevation standards: one for those east of 12 and one for those west of 12; 2) Resolving question about freeboard and whether than language needs to part of the definition for the LES; 3) Lateral Additions and 4) Measuring Height relative to flood standards). Mayor Cahoon asked if there were any other significant changes.

Town Manager Andy Garman noted that the modification of the substantial damage and improvement language was also a significant change. Currently, a property is either in or out flood zone. If a property is in a flood zone, they have to comply with the 50% language or the substantial improvement/damage definitions. Mr. Garman explained that with the adoption of the LES, if a property were in an x flood zone then the substantial improvement rule would not apply. He noted that was a big difference than in the past. Mayor Ben Cahoon said this would help some of those structures that have not been able to make those improvements in the past and staff concurred.

Staff presented the online preliminary maps and Staff and the Board examined the differences between the currently adopted and the preliminary maps. The Boards looked at specific examples of commercial structures that may be positively impacted by changes to the substantial improvement language.

The Boards then discussed how the preliminary maps were developed and why the changes were so significant in the preliminary maps. The question was raised whether the Town has to adopt the maps. Mr. Zehner responded that the Town is required to adopt the maps and ordinance if it wishes to remain a participant in the National Flood Insurance Program (NFIP). Mr. Zehner noted that the proposed regulations keep development consistent with the today's standards.

The Boards were concerned about the message that adopting maps would send to homeowners- that flood insurance is not needed because the FEMA maps remove you from the flood zone. The Board was concerned that property owners need to understand that they still need to keep their flood insurance and that there could be long term implications and increases to their flood insurance if there was a lapse in coverage.

There was a question on the mapping of the flood zones and whether the Town would have two maps. This potentially could be confusing to property owners and developers. Mr. Zehner responded that the Town would only utilize the FEMA maps. He further explained that property owners would not be able to just look at the FEMA map and use it for regulatory purposes for any community in Dare County; that is why a geographic boundary was suggested – an LES east and west of 12.

Mayor Cahoon suggested that Staff develop an elevation requirement map reflecting the LES, that can be posted to the website.

A question/concern was raised about sound side and causeway areas that are at high risk for flooding and yet seem to be regulated at a lesser standard than the oceanfront, this led to more discussion about the accuracy of the maps, the process for developing the maps, and the resulting need for the local elevation standard.

The Boards further discussed the language specific to substantial improvement/damage using the Fin and Feather Motel as an example and it was noted that how the language is applied may be misunderstood. There was a general concern that legacy structures not be penalized for non-conformities.

The Board concluded their meeting with discussion about variances as they relate to construction below the RFPE and the variance process in general.

Mr. Zehner requested that any points that the Boards want carried forward to the Planning Board's next meeting in March be submitted to Staff so that there is no delay.

Mayor Cahoon requested that a memo summarizing the joint discussion be developed and provided to the Board of Commissioners prior to their next meeting.

The Board of Commissioners voted to recess to their afternoon meeting. The Planning Board took a brief recess at 10:15 and reconvened at 10:25 a.m.

Public Comment/Audience Response

Porter Graham, Government Affairs Director for the Outer Banks Home Builders Association, thanked the Boards for participating in the discussion of the proposed Flood Ordinance. The OBHBA is concerned about risk to homes that will be newly in the X zone. They want to ensure that property owners keep their flood insurance. Mr. Graham expressed concern about the Town's proposed building standard element (LES) 10 ft. standard on X and shaded X properties vs. 8 ft. which has been proposed by Donna Creef with Dare County. Mr. Graham inquired whether Planning staff had looked at future sea level rise in addition to historical flood data. Mr. Graham also questioned the Town's requirements related to lateral additions noting that Duck is the only other municipality that does not allow lateral additions at the same level. Mr. Porter thanked Mr. Zehner for communicating with the Association.

Approval of Minutes

There being no changes, David Elder moved that the minutes from the January meeting be approved as presented. Meade Gwinn seconded the motion and it passed by unanimous vote.

Establishment of Regular Meeting Dates for Calendar Year 2020

Chair Vaughan reviewed the proposed meeting dates with the Board. After some discussion David Elder moved to approve the Submittal Calendar as presented. Megan Lambert seconded the motion and it passed by unanimous vote.

Action Items

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.

Mr. Zehner introduced the item explaining that this proposed text amendment was discussed preliminarily at the Board's January meeting. Based on the discussion and feedback provided at the meeting, the applicant (Kate Creef, Assistant General Manager, on behalf of Outlets Nags Head) submitted a revised and refined ordinance for the proposed text amendment and markup of the relevant sections of the UDO.

Originally, 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. At that time, Mrs. Creef also indicated that there was 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.

Modifying the original proposal, the request now is 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 to two.

Mr. Zehner gave the Board a brief history related to outdoor stands and noted that 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 years.

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 recommend 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.

Kate Creef with Outlets Nags Head addressed the Board. Mrs. Creef 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 they believe would enhance the

customers' shopping experience. They agree that adding the definition to outdoor stands is a good idea but would also like to be able to have a produce stand or hot dog stand to serve the needs of their customers, to increase the time customers spend at the outlets, increase sales and improve the overall shopping atmosphere.

Mrs. Creef confirmed for Mr. Gwinn that they would like to put the Reservation Stand under the terrace area, in the center of the Outlets. Mrs. Creef noted that terrace area has room for a small food cart as well, if allowed.

Mr. Ferguson suggested that they have building inspector or public safety have a look at the proposed locations to make sure that they are accessible.

Mr. Elder agreed with Mr. Ferguson's suggestion and Ms. Lambert concurred noting that they require this even for dumpster enclosures.

Mr. Zehner noted that this requirement can be part of the minor site plan review process or they can add a provision to the ordinance that stands are subject to this type of review. The Board discussed this and agreed that this requirement could just be part of the administrative review.

After some further discussion with regards to stationary vs. mobile stands, David Elder moved to recommend approval of the proposed text amendment as submitted; Meade Gwinn seconded the motion and it passed by unanimous vote.

Consideration of a Text Amendment to the Unified Development Ordinance to correct identified typographical errors.

Principal Planner Holly White explained that since the adoption of the Unified Development Ordinance (UDO) on August 7, 2019, Staff has found minor typographical errors throughout the document. Ms. White noted that this amendment will address minor numbering, punctuation, grammar, and contextual issues. Additional similar amendments will be necessary to address any other outstanding issues in the future.

Staff would recommend that the amendment be adopted as outlined in staff's memorandum. Ms. White said she would be happy to answer any questions for the Board.

Ms. White confirmed for Mr. Gwinn that these proposed revisions do not change the language or intent of the UDO.

Gary Ferguson moved to recommend adoption of the proposed text amendment, David Elder seconded the motion and it passed by unanimous vote.

Report of Board of Commissioners Actions

Mr. Zehner provided the Board with a brief update from the February 5, 2020 BOC meeting; of note the BOC approved the vested right site plan/conditional use application for the Outer Banks Hospital's addition to the existing radiation therapy building. In addition, several other items were discussed including: the Flood Prevention Ordinance, large occupancy/event homes, legacy options in the UDO and workforce housing.

Town Updates

None

Discussion Items

Continued Discussion of Regulation of Large Occupancy/Event Homes

Deputy Planning Director Kelly Wyatt explained that this was a continuation from the Planning Board's January meeting where they discussed large occupancy/event homes. As Mr. Zehner noted, Staff provided the Board of Commissioners with a brief memo and update at their February meeting requesting guidance on how to proceed.

The BOC 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 regarding large events being held within single-family residential dwellings. It was the consensus of the Commissioners that the Planning Board and Staff continue to move forward with discussion on the regulation of such events.

Additionally, the BOC 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 suggests 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 will require additional time and coordination.

With regards to the regulation of events being held within single-family dwellings within the Town, Staff would recommend consideration be given to developing criteria like the Town of Duck's "Wedding Event Registration Policy". If a wedding-related event in the Town of Duck involves more than 50 people, they are required to complete a registration form and return it to the Town within 30 days in advance of the event. The form is then 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 contact can be made prior to or during the event should it be necessary. As part of the registration process, applicants are provided the Town's regulations for signage, noise and trash removal. Additionally, applicants must demonstrate that enough 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. Ms. Wyatt provided the Board with a copy of Duck's registration form in her staff memo.

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 an amendment to the Town Code, likely within Chapter 4, Amusements, Entertainments, Mass Gatherings and Commercial-Outdoor Recreational Uses. 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 meeting.

Ms. Wyatt explained for Mr. Ferguson that currently there is no regulation/limitations as far as a how many events can take place in a single-family dwelling; the Town only regulates large scale crowd gathering events.

Mr. Elder stated that in other towns there are houses that host multiple weddings in one week. Ms. Wyatt noted that although the Town does not currently regulate the use, the Town does regulate the "symptoms" via the noise ordinance, parking ordinance, etc.

Mr. Elder expressed concern that many weddings take place on the beach and result in multiple items left on the beach all day. Mr. Elder inquired if this issue could be addressed as part of the registration process. Ms. Wyatt confirmed that the Town does regulate items left on the beach overnight.

Mr. Gwinn agreed that it would be good to incorporate other ordinances (such as items left on the beach) into the registration process.

Ms. Wyatt confirmed for Ms. Harrison that the registration is not intended to limit events. Ms. Wyatt further explained that there are no requirements currently so issues are only complaint driven where the Police Department often get involved; this registration could eliminate some of the noise, parking and other safety issues.

Chair Vaughan inquired how participants would learn about regulations? Ms. Wyatt stated that the Town will need to work with Rental companies, wedding planners, social media, etc. to educate the public.

Ms. Wyatt explained for Mr. Ferguson the difference between a crowd-gathering permit and this proposal noting that those permits are for public events hosting over 100 participants.

After some further discussion, the Board agreed to have Staff bring forth a draft amendment.

Discussion of Legacy Establishments/Structures

Mr. Zehner explained that Staff was recently approached by individuals interested in purchasing the Blue Heron Motel at 6811 S. Virginia Dare Trail. During discussions about their interest/intent for the property it became obvious that there are limitations imposed by Town Code requirements on the evolution of the current use of the property.

There is lengthy discussion in the Comprehensive Plan regarding legacy structures and 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.

Generally, 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. In addition, 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 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.

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.

Mr. Zehner suggested as part of the initial discussion, it would be helpful for the Board to discuss perspectives regarding what does and does not constitute a legacy business or structure, what are the defining characteristics, and what businesses or structures typify the term.

Mr. Zehner confirmed for Mr. Ferguson that we don't know if it's the business or the structure that has the legacy component; the Town has not made that distinction; it could be either/or both. There are buildings around Town where the importance is the building then there are other situations where the importance is the use of that building. Mr. Zehner also noted that there will be situations where it could be both.

Ms. Vaughan noted that while she understood how the ordinance might limit non-conforming structures and how it might benefit the Town to reduce those limitations, she was unsure how that applied to non-conforming uses.

Mr. Zehner used the example of the Blue Heron Motel where it is both a non-conforming use as well as a non-conforming structure. In that case they would be limited on their ability to expand that use by adding for example a restaurant or coffee shop, in order to make that use more dynamic or evolve the way the use operates.

Mr. Zehner confirmed for Mr. Ferguson that hotels are no longer allowed in that district. Mr. Zehner also confirmed that allowing a hotel to add a restaurant shop or even a swimming pool with the idea of making the hotel more viable would be seen as increasing the non-conformity.

Mr. Ferguson suggested perhaps looking at the non-conforming section and making changes to that. Mr. Zehner disagreed stating that it by calling it a non-conforming entity, it goes against the intent of the Town with regards to legacy businesses/structures.

There was further discussion about what is considered the legacy aspect – the use or the structure; as well as what a non-conforming use is currently allowed to do as far as modifications in order to make that business more viable.

Mr. Zehner explained that it comes down to whether the Town would rather see that use or building go away or would the Town rather institute flexibility the use to stay and evolve. The Board agreed that they prefer the flexibility.

Mr. Zehner confirmed for Mr. Elder that once they establish what a legacy business/structure is or isn't they would suggest allowing modifications via the Conditional Use Process to ensure that the modifications meet the Town's requirements.

Ms. White confirmed for Chair Vaughan that the Focus Advisory Committee identified approximately 32 to 34 legacy businesses/structures in Town that may or may not be nonconforming.

Staff agreed to bring back to the Board some parameters and a list of non-conforming "legacy" commercial properties including the age of the property to give the Board a sense of what is out there an allow them to zero in on defining what makes them a legacy property.

Discussion of Residential Stormwater Regulations

Mr. Zehner explained that given the continued importance and focus on stormwater, the Board of Commissioners asked him to attend their retreat on January23, 2020 to discuss the Town's residential stormwater regulations.

Following the Board of Commissioners' discussion, the Board directed Staff to present the Board's perspectives and the options identified by Staff to the Planning Board for review and consideration of any recommended actions.

Mr. Zehner reviewed for the Board the types of development activities that trigger the regulations and ordinance requirements.

During their discussion at the retreat, the Board of Commissions noted guiding principles for further review and consideration of the residential stormwater regulations. Mr. Zehner reviewed those principles with the Planning Board.

In their consideration and any recommendation to the Board of Commissioners, Staff would suggest that the Planning Board focus on whether the regulations and any potential changes address these perspectives and principles.

In their review, the Board of Commissioners also asked that the Planning Board consider the options identified by Staff, to determine whether related actions may be necessary so that the regulations are more consistent with those principles. Those options are as follows:

•Improve education and availability of resources
•Enhance ordinance incentives for preferred outcomes
•Provide an administrative option for engineering analysis to exempt or reduce requirement so This may be an option, but conditions or standards allowing for exemption would need to be identified.
•Provide more alternatives
•Provide for administrative waiver/variance
•Standardize dimensions and volume of BMP's
•Create a points-type program for BMP's and/or preferred outcomes, similar to the design guidelines

Mr. Zehner discussed these options further giving examples of each as noted in his staff memorandum.

Staff would recommend that the Planning Board discuss the residential stormwater regulations, identifying their own perspectives regarding the intent of the regulations and whether the regulations achieve their intended purpose, align with the Commissioners' principles, and/or require adjustment.

Mr. Zehner noted that he envisions this discussion will take several meetings before any conclusions are reached.

Town Engineer David Ryan discussed the previous stormwater regulations which had two separate levels of stormwater management and were tied to fill; depending on the amount of fill determined whether the plan was non-engineered vs. engineered. Mr. Ryan confirmed for Mr. Ferguson that non-engineered plans required you to contain 1.5" of volume on site. Engineered plans required you to contain 2.15" of volume on site. Mr. Ryan stated that what the Town has now is somewhere in the middle.

Mr. Ferguson noted that there seem to be some communities that allow for exemptions based on money and suggested that they consider a Fee in Lieu option.

Mr. Ryan stated that while he was aware of this option, what the Town is trying to do is come at it from a low impact development standpoint and manage stormwater at the source, prior it to getting into the drainage systems.

Mr. Ryan explained that the Town is taking a more holistic approach to stormwater management through improvements, restoration, maintenance, partnerships with DOT and other agencies and research in order to address the issue.

Ms. Lambert noted that these changes have made a big difference in her neighborhood.

Mr. Elder discussed septic and septic permitting and how that impacts the Town's regulations. Could the Town work with Dare County on the permitting side.

Mr. Ryan noted that Staff has tried to coordinate with the County on this issue, but ultimately it is the County's decision.

Mr. Elder stated he likes the idea of providing a credit for reducing site disturbance, lot clearing, or filling.

After some further discussion the Board agreed that there is a lot to consider and will discuss it further at their next meeting.

Discussion of FY20-21 Planning & Land Use Work Plan

Mr. Zehner explained that in discussions with members of the Planning Board at their recent retreat, the Board of Commissioners encouraged the Planning Board and Staff to work jointly on the development of a Work Plan for the next fiscal year, in conjunction with the development of the budget, to establish priorities relating to planning and land use; in short, this Work Plan would be a collection of prioritized actions and activities serving as a strategic plan to implement various initiatives and plans.

For the Board's consideration:

•Plan Implementation: Staff would suggest that activities included in the Work Plan focus on implementing the following four (4) plans:

- Town of Nags Head Comprehensive Plan, July 5, 2017
- Vulnerability, Consequences, Adaptation, Planning Scenarios (VCAPS) Report, August 2017
- Town of Nags Head Parks and Recreation Plan, January25, 2012

- Nags Head Pedestrian Plan, July 16, 2014

Additional consideration should be given to activities contained in the Town's Decentralized Wastewater Management Plan (2005) and Hazard Mitigation Plan(2015); however, an updated Hazard Mitigation Plan is expected to be presented for adoption in June/July 2020 and the update of the Decentralized Wastewater Management Plan is an active project, expected to be initiated in the current fiscal year.

•Vision & Goals: As noted, the Work Plan should serve as a strategic plan to implement various initiatives and plans, but activities in the Work Plan should also work towards the achieving the accepted vision and goals for the Town.

•Work Plan Categories: For the purpose of the Work Plan and intended to highlight as well as focus the implementation of specific plans, the Vision, Goals, Key Concerns, and Guiding Themes, Staff is suggesting that Work Plan activities by categorized in at least one of five categories.

Staff would recommend that the Planning Board review the information outlined above, and specifically the implementation matrixes from the four (4) plans and suggest any focus or priority activities for the Work Plan.

Mr. Zehner asked that Board begin to think about ongoing projects and tentatively identify priorities, and timeline and resource limitations. The Board agreed that this is an important task which will give them some structure and allow them to communicate better with the Commissioners.

Planning Board Members' Agenda

None

Planning Board Chairman's Agenda

None

Adjournment

There being no further business to discuss, a motion to adjourn was made by David Elder. The time was 12:11 AM.

Respectfully submitted,

Lily Campos Nieberding

DRAFT

MEMORANDUM
Town of Nags Head
Planning & Development Department

To: Planning Board

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

Date: March 13 2020

Subject: Consideration of a zoning ordinance text amendment pertaining to "Tutoring Facility/Learning Center".

BACKGROUND

Megan Dixon and Kim Cowen have submitted the attached text amendment request to the Unified Development Ordinance, which, if adopted would permit "Tutoring Facility/Learning Center" as a permitted use within the C-2, General Commercial Zoning District.

The applicants have provided a detailed explanation of the nature and reason for their request. They would like to offer tutoring, both part- and full-time, to registered homeschooled children, ages 6 and up. Ms. Cowen has spoken with both me and the Senior Building Inspector, Steve Szymanski, about the proposed business use. In looking at the current UDO, similar uses included Child Care Facility and School, however, by definition, the proposed use would not meet either of these use classifications. Therefore, it was recommended to Ms. Cowen, that she proceed with a text amendment request to consider establishing this new use.

STAFF ANALYSIS AND RECOMMENDATION:

Planning staff finds the proposed use is consistent with the 2017 Comprehensive Land Use Plan and the desire to encourage land uses that serve the needs of both year-round and seasonal residents in support of the town's overall vision for the community. Staff would recommend the use be listed under the *Service* category in the Table of Uses and Activities and be defined as follows:

> ***Tutoring Facility/Learning Center*** means a private, for profit or non-profit, use for the instruction of students in subjects and materials commonly taught in primary and secondary schools, for test-preparation, or the teaching of music and visual arts.

Staff recommends approval of the proposed use as presented, with the changes noted.

(DRAFT)
AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF NAGS HEAD, NORTH CAROLINA PERTAINING TO PROPOSED NEW USE "TUTORING FACILITY/LEARNING CENTER"

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160A-381, the Town of Nags Head (the "Town") may enact and amend ordinances regulating the zoning and development of land within its jurisdiction and specifically the location and use of buildings, structures and land; pursuant to this authority and the additional authority granted by N.C.G.S. Chap. 160A, Art. 19 et. seq, the Town has adopted comprehensive zoning regulations and has codified the same within the Unified Development Ordinance, Part II of the Town Code, adopted pursuant to N.C.G.S. § 160A-363, which allows the Town to combine certain land development ordinances into a unified ordinance; and

WHEREAS, a text amendment application has been requesting consideration be given to permitting "tutoring facility/learning center" within the C-2, General Commercial Zoning District' and

WHEREAS, the Town of Nags Head 2017 Comprehensive Plan includes policies supporting land uses that serve the needs of both year-round and seasonal residents in support of the town's overall vision for the community and to support and foster small, local businesses that preserve and uphold the vision and legacy of the town.

ARTICLE II. Construction.

For purposes of this ordinance amendment, underlined words (underline) shall be considered as additions to existing Town Code language and strikethrough words (~~strikethrough~~) shall be considered deletions to existing language. Any portions of the adopted Town Code which are not repeated herein but are instead replaced by an ellipsis ("...") shall remain as they currently exist within the Town Code.

ARTICLE III. Amendment of the Unified Development Ordinance.

PART I. That **Section 6.6 Table of Uses and Activities** be amended as follows:

		Residential Districts			**Commercial Districts**				
Use Category/Class	**Use Type**	**R-1**	**R-2**	**R-3**	**CR**	**C-1***	**C-2**	**C-3**	**C-4**
Service	Tutoring Facility/Learning Center						P		

PART II. That **Section 10.16 Required Parking by Use** be amended as follows:

Use Category/Class	Use Type	Required Parking
Institutional	Tutoring Facilities/Learning Center	One parking space for each 300 square feet of gross floor area.

PART III. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. This ordinance shall be in full force and effect from and after the ___ day of ____ 2020.

_____
Benjamin Cahoon, Mayor

ATTEST:

_____
Town Clerk

APPROVED AS TO FORM:

_____
Town Attorney

Date adopted: _____

Motion to adopt by Commissioner _____

Motion seconded by Commissioner_____

Vote: _____ AYES _____ NAYS

App # 202010230

ZONING AMENDMENT APPLICATION
TOWN OF NAGS HEAD, NORTH CAROLINA

Applicant Outer Banks Montessori Collective

Mailing address 202 Shallow Street KDH 27948

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

A text amendment to create a new use category for a learning center in C-2 Zone in Nags Head

Reason for request

We are an academic service business - we provide tutoring, part & full time, to homeschool families. Each child we serve (ages 6+) is a registered homeschool child. Families can choose from a range of services - from 1 hour sessions up to 6 hours/day, 5 days a week & everything in between (3x/week, 1 week in 3/week off, 9-1, etc) We use the Montessori methodology as the bases of our services. Montessori includes the use of didactic, hands on learning materials that homeschool families might not have at home. We will have anywhere from 1-25 students in our space at one time.

We are not a school, we don't fit into any of the existing use categories (school, childcare, etc), And so we propose a new use that would accomodate us as a learning center / academic services, specifically to serve local homeschool families.

Applicant (Megan Dixon) & (Kim Cowen)

2/18/20
Date

757-613-1873

MEMORANDUM
Town of Nags Head
Planning & Development Department

To: Planning Board
From: Holly White, Principal Planner
Michael Zehner, Director of Planning & Development
Date: March 11, 2020
Subject: Updated Flood Maps, Flood Prevention Ordinance, and Related Regulations

Overview

As the Planning Board is aware, the Town now has the Letter of Final Determination concerning the updated FEMA Flood Insurance Rate Map (F.I.R.M.) as of December 19, 2019. As previously relayed, the updated map would be effective no later than 6 months after receipt of the letter, so June 19, 2020. The Board of Commissioners and Planning Board met jointly at the Planning Board's meeting on February 18, 2020 to review and discuss an initial draft of the updated Flood Damage Prevention Ordinance, along with updated building height measurement and fill provisions, to be considered in concert with the updated F.I.R.M. covering the Town. Please find the minutes from that meeting attached. The minutes were also provided to the Board of Commissioners at their meeting on March 4, 2020 where there was a brief discussion about the maps, ordinance, and local elevation standard. Additionally, a Community Informational Meeting was held on Monday, March 9th. The meeting materials and a recording of the meeting are available at www.nagsheadnc.gov/floodmaps.

The anticipated schedule of next steps is as follows:

- March 17, 2020 - Planning Board Meeting; consider recommendation
- April 8, 2020 - Board of Commissioners Consent Agenda; request to schedule public hearing
- May 6, 2020 - Board of Commissions Public Hearing; Final Action (or continued consideration to June 3, 2020 meeting)
- June 19, 2020 - Effective Date (no later than)

Background on Flood Maps

The preliminary F.I.R.M., released in June of 2016, revealed that many areas of the Town will be removed from the Special Flood Hazard Area. Additionally, the Base Flood Elevations have been significantly reduced in areas remaining in the Special Flood Hazard Area. The F.I.R.M. depicts impacts from storm surge for the 1% (or 100-year) and .2% (500-year) flood zones; however, Staff does not believe that the F.I.R.M. accurately represents the overall risk of flooding in the Town.
There is an overall reduction of properties located in flood zones in the Town on the preliminary F.I.R.M. This includes fewer properties in AE and VE flood zones and an overall increase in properties located in X flood zones, even on the oceanfront. Further,

mapped base flood elevations (BFE's) are being reduced from a current BFE of 8-10' in the AE flood zone to 4-5' on the preliminary F.I.R.M. In addition, a new AO flood zone has been added to the area west of the primary frontal dune. AO flood zones only require elevation above existing grade.

The draft preliminary maps can be viewed using the State's FRIS (Flood Risk Information System) digital online mapping system at the following: LINK - Be sure to click the drop down button in the upper right hand corner and select "Preliminary" instead of "Effective to view the draft maps.

Due to significant number of properties with known flooding histories moving into the X or Shaded X zones on the preliminary maps, local elevation standards of 12' for areas east of NC 12 and SR 1243 and 10' for areas west of NC 12 and SR 1243 is proposed as part of the Flood Damage Prevention Ordinance adoption. The development of the local elevation standard has been a joint effort Dare County and the Towns of Manteo, Nags Head, Kill Devil Hills, Kitty Hawk, Southern Shores, and Duck. The local elevation standard (LES) means a locally adopted elevation level used as the Regulatory Flood Protection Elevation (RFPE) to mitigate flood hazards in the Shaded X, X, AE, AO, VE, as depicted on the FIRMs for Nags Head.

Maps supporting the proposed local elevation standards, depicting the existing elevations of grades, existing elevations for first floors, and comparing the flood zone coverages based on the existing and preliminary maps, are attached for the Board's review and will be discussed at the meeting. These maps were previously distributed to the Board prior to the Community Informational Meeting.

Draft Flood Prevention Ordinance Amendments & Other Related Amendments

The Town is required to update its Flood Damage Prevention Ordinance, in conjunction with the maps and flood insurance study, with the most recent version of the State Model Ordinance for Coastal Areas. There are changes in the State Model Ordinance that the Town has to adopt in order to remain in the National Flood Insurance Program (NFIP). Additionally, there are State recommended options. These changes are reflected in the attached Adoption Ordinance for the Flood Damage Prevention Ordinance. In conjunction with amendment of the Flood Damage Prevention Ordinance, it will also be necessary to update relevant portions of Article 4. *Development Review Process*, concerning Floodplain Development Permits; Article 8. *District Development Standards*, concerning the measurement of height; and Article 11. *Environmental Provisions*, Part 1 *Stormwater, Fill, and Runoff Management,* concerning the regulation of fill. These changes are also represented in the attached Adoption Ordinance for the Flood Damage Prevention Ordinance.

Next Steps

After the Planning Board meeting, staff will incorporate any suggested changes in the draft Flood Damage Prevention Ordinance and the text amendment will officially be presented to the Board of Commissioners at their May 6, 2020 meeting for a public hearing and possible adoption.

Attachments:

1. Minutes of the February 18, 2020 Joint Meeting of the Planning Board and Board of Commissioners
2. Adoption Ordinance
3. Elevation Map
4. FFE Analysis Map
5. Flood Zone Comparison Maps

Summary of February 18, 2020 Planning Board and Board of Commissioners Joint Discussion to Review Draft Flood Damage Prevention Ordinance Amendments

Chair Vaughan called for a motion to enter into a joint meeting with the Board of Commissioners to review and discuss the draft flood damage prevention ordinance amendments. Molly Harrison so moved, Gary Ferguson seconded, and the motion passed by unanimous vote.

Planning Director Michael Zehner introduced staff in attendance and provided a brief introduction of the preliminary flood maps and draft flood damage prevention ordinance.

Mr. Zehner indicated that the Town received maps in June 2016. There has been on-going discussion about the maps since that time with staff and the boards. The preliminary maps update the current 2006 maps. The Town received a letter of final determination in December 2019 that gives the Town until June 19, 2020 to adopt the preliminary maps, ordinance, and study. Mr. Zehner indicated that there are concerns with the preliminary maps and what is reflected in the draft ordinance addresses that. There is a tight timeline to adopt. Mr. Zehner said that much of the draft ordinance is based off of the model. However, there are other options where additional feedback is needed. Mr. Zehner stated that the goal of this meeting is to gain feedback from the Board of Commissioners and the Planning Board on the draft ordinance so that staff can bring back a refined final draft to Planning Board in March. Mr. Zehner indicated that staff is trying to avoid having more than a one meeting delay due to the adoption date on or before June 19th. Planning Director Zehner concluded and turned the presentation over to Planner Holly White.

Planner Holly White shared how the municipalities in Dare County and the County have been jointly working together to review the maps, develop the “Low Risk is Not No Risk” Outreach Strategy, and develop a local elevation standard (LES) in light of the underrepresented risk on the maps. The planners group worked with the local building and development community as well as other municipalities to ensure as much consistently in the development of the local elevation standard language as possible.

Ms. White indicated that the local elevation standard is a locally adopted elevation level that is used as the Regulatory Flood Protection Elevation (RFPE). The Town’s RFPE now is the Base Flood Elevation (BFE) plus freeboard. White said that the LES would mean regulating in Shaded X or X, AE, or AO, V flood zones. We currently do not regulate in the Shaded X or X now. The benefit of doing this is that it realizes insurance benefits to property owners, but the Town is able to regulate for known risks. White further said that adopting a higher standard would protect homeowners from building in a way that would later cause higher insurance rates (if the map changed in the future) for non-conforming structures.

Ms. White rereviewed that the Town currently has AE and VE flood zones and that is a 1% chance or 100-year flood. This means there is a 1% chance in a year for a 100-year flood. The AO flood zone is new for Nags Head on this preliminary map. This is also a 1% chance or 100-year flood but is limited to cases where there is overtopping of the dune and ponding behind the primary frontal dune. There is typically a minimum elevation above adjacent grade for AO. The Town also has Shaded X and X zones and that is a .2 chance of flood but there are currently no regulations for these areas.

Ms. White summarized the major changes in the flood maps for the board. She indicated that these included increases in the number of properties in X flood zone (even X on the oceanfront); fewer VE and AE zone properties; and reduced base flood elevations. Ms. White said that on the current maps AE flood zones have a BFE of 8-10' and the new maps have BFE's of 4-5'. Additionally, in VE the Town has a consistent VE 11' on the current maps, but the preliminary maps show BFE's ranging from 9-12 along oceanfront.

Ms. White explained to the boards that if the Town elected to adopt an LES, the Town would adopt the maps for flood insurance purposes. However, the LES would still be needed to mitigate and protect future losses. She indicated that the easiest way to explain the LES was from a geographical perspective. East of NC 12 and SR 1243 would be treated the same as the current V zone is treated. This area includes the Shaded X, X, AO, and V zone properties and would have an elevation requirement of 12'. West of NC 12 and SR 1243 would be required to meet a 10' elevation requirement. This area includes Shaded X, X, and AE flood zones. Ms. White said that in all cases the LES would be higher than the preliminary mapped flood zone. She concluded explanation of the LES by saying that the LES is consistent with the regulatory flood protection elevation (RFPE) of the currently effective flood maps.

A board member referenced the graphic in the presentation and asked where the freeboard was in the LES. White responded that the LES had been developed, to this point, without a freeboard but this may need to be amended to achieve more CRS (Community Rating System) points. Staff is still exploring how we will best be rated for purposes of CRS and whether the term freeboard is needed for CRS rating. Due the conditions present in Nags Head and past flooding, the easiest way to convey the local elevation standard to the public as been the geographic reference to east and west of 12 and 1243. She pointed out that in the referenced graphic, the freeboard is between the base flood elevation and the regulator flood protection elevation.

Ms. White referenced the map in the presentation and noted that the map depicts current X zone structures in relationship to existing elevation contours in the Town. She said that most existing X zone properties are located above 10' elevation contour. Ms. White added that there has been an increase in the number of repetitive loss properties in between the highways and in west side neighborhoods. She explained that this is notable because historically repetitive loss properties have primarily been on the oceanfront or sound front. To be considered repetitive loss, the structure must have obtained 2 or more losses in a 10-year period.

Ms. White outlined the major components of the local elevation standard, as proposed in the draft ordinance. She noted that this included:

- LES: 12' East of 12/1243 and 10' west of 12/1243
- East of 12/1243: Treat as V Zone with V zone requirements; no enclosures
- West of 12/1243: Limit enclosures 300 sq. ft. or less
- Existing structures: Areas cannot be converted for temperature-controlled space unless meets RFPE
- Section 11.44.2.7.9., Standards in Shaded X and X:
    - Substantial improvement/damage definitions do not apply
    - Lateral additions- allowed up to 10%; if greater than 10% total floor area on the level of addition- must meet RFPE
    - Remodeling/renovations existing habitable area- allowed as long as footprint does not increase.

Ms. White then outlined the major options as noted in the draft ordinance. These included:

- 11.43.5.1. Elevation Certificates
    - Can require 3 certificates- recommend 2 (after first floor and prior to CO)
- 11.43.5.6. Finished construction V zone certification
    - Require V zone certification at permitting
- 11.44.2.4. Elevated Buildings
    - Non-conversion agreement recorded with Register of Deeds for enclosed areas
- 11.44.2.7.5. Substantial Improvement/Damage
    - Utilize 365 day period
    - Repetitive Loss language optional

Board of Commissioner Webb Fuller asked what a non-conversion agreement is? Ms. White and Mr. Cory Tate, Building Inspector, responded that this is simply an agreement, signed and recorded by homeowner, that prevents areas below regulatory flood protection elevation from being covered to habitable area.

Mayor Ben Cahoon asked if the Town was creating our own certification forms or using FEMA's form. Ms. White responded that we would rely on FEMA's elevation certificate form. Mr. Tate noted that staff had discussed the possibility of creating a town specific V Zone Certification form that would include certification language unique to coastal areas for pools and fill.

Ms. White proceeded with the presentation and explained that needed modifications to the UDO and references to height. She explained that the way height is measured is not changing. Allowances are being made to not penalize the height of structures that are required to meet the LES in Shaded X and X.

Ms. White then reviewed the provisions for fill in the draft ordinance. She noted that the regulations for fill in the flood ordinance are limited to V Zones and areas east of 12 and 1243. The stormwater ordinance would need to be updated for consistency as it also addresses fill separately. Ms. White pointed out that the ordinances states:

- No alteration of sand dunes that increase potential flood damage
- Fill is limited to 2' or less
- If 2' or greater, an analysis prepared by a design professional demonstrating no diversion of floodwaters
- Minor grading and minor quantities of nonstructural fill allowed (landscaping, drainage, parking slabs, pool decks, patios, etc.)

Board members had questions about how fill was regulated. There was general discussion about the where, how much fill, and in what cases if less than 2' of fill was proposed. Ms. White and Mr. Zehner explained that fill less than 2' would only be allowed for landscaping, drainage, parking, pool decks, and patios. No structural fill is allowed in V flood zones. If fill was greater than 2', an analysis would be needed by an engineer. The boards further discussed how fill is relative to height and where height is measured from when fill is included. Staff explained that height is measured from a post fill elevation.

Ms. White concluded the presentation by reviewing the matrix that outlines what all communities are doing for the LES. How Nags Head is implementing the LES, is consistent with other communities. The main difference is that Nags Head is utilizing the 12' LES east of NC 12 and SR 1243 and 10' west of NC 12 and SR 1243. White reintegrated that is the goal of staff to bring forward a clean draft to the Planning Board at the March Planning Board meeting.

Mayor Cahoon kicked off a discussion by the boards by circling back to discuss fill and height.

Planning Director Michael Zehner referenced back to the March 4th Staff Memo titled, "Updated Flood Maps, Flood Prevention Ordinance, and Related Regulations". On page 5 and 6 of the memo, Mr. Zehner referenced,

> ***" 8.6.4.1.1.*** In any Shaded X, X, or AE special flood hazard area flood zone, height will be measured from the regulatory flood protection elevation or finished grade, whichever is higher. In cases where there is a ground floor enclosure below the regulatory flood protection elevation, height shall be measured from finished grade."

Mr. Zehner indicated that how height is measured is not changing. The proposed language does not penalize property owners for meeting flood regulations. The modifications simply apply this allowance to be applied to Shaded X and X flood zone properties. The Town has previously not regulated Shaded X and X flood zones. Board members discussed concerns over how height is measured and the potential for incredibly tall buildings if height is measured from RFPE. There was also a great deal

of discussion about whether height was measured from the finished fill height or pre-fill and whether this was good or not. Mayor Cahoon indicated that there had been a separate discussion on fill that would be concluded soon. Mayor Cahoon further noted that the maps and ordinance would be adopted ahead of the fill ordinance. Staff and the board would need to remember when the fill ordinance is adopted that the flood ordinance and height measurements would need to be consistent between the ordinances.

Mr. Zehner reviewed the regulations for the height of structures in coastal high hazard areas:

> ***"8.6.4.1.2.*** *In coastal high hazard areas ~~or,~~ VE zones, AO, and Shaded X or X special flood hazard areas east of Hwy 12 and 1243, height shall be measured from regulatory flood protection elevation. In cases where the finished grade elevation is above the regulatory flood protection elevation, height shall be measured at approximately eighteen (18) inches above the highest, undisturbed, finished grade directly beneath the structure."*

He explained that you could not use fill to elevate the building pad because fill couldn't be used for structure support in V zones. Additionally, height would be measured from the 18" above highest, undisturbed finished grade or "free of obstruction". Board members discussed how height should be measured in VE zones: was this from natural grade, fill grade, or free of obstruction (i.e. 18 inches above the highest, undisturbed, finished grade). Staff clarified that this is 18 inches above highest, adjacent grade or free of obstruction. Mayor Cahoon gave an example of how height would be measured in a V zone.

Commissioner Fuller asked when the board would be able to discuss hard edged structures, rock, and stormwater. Planning Director Zehner indicated that BOC asked them to come back to PB and the discussion would start later in the meeting.

Mayor Cahoon recapped and asked that in regard to this ordinance the major changes were:

- 2 elevations standards- 12' east of NC 12/SR 1243 and 10' west of NC 12/SR 1243
- Resolving question about freeboard and whether that was needed as part of the definition for our LES
- Lateral additions- Allowance up to 10% at same level of non-conforming structures
- Height relative to flood standards

Assistant Town Manager, Andy Garman noted that the modification of the substantial damage and improvement language was also a significant change. Currently, a property is either in or out flood zone. If a property is in a flood zone, they have to comply with the 50% language or the substantial improvement/damage definitions. Mr. Garman explained that with the adoption of the LES, if a property were in an x flood zone then

the substantial improvement rule does not apply. He noted that was a big difference than in the past. Mayor Ben Cahoon said this would help some of those structures that have not been able to make those improvements in the past and staff concurred.

Staff brought up the online preliminary maps and staff and the board examined the differences between the currently adopted and the preliminary maps. The boards looked at specific examples of commercial structures that may be positively impacted by changes to the substantial improvement language.

The boards broadly discussed how the preliminary maps were developed and why the changes were so significant in the preliminary maps. The question was raised whether the Town has to adopt the maps. Mr. Zehner responded that we are required to adopt the maps, ordinance, and study if the Town wishes to remain a participant in the National Flood Insurance Program (NFIP). At a minimum, the Town must adopt the model ordinance. Mr. Zehner suggested that the Town continue forward on the current path of adoption and if after adoption, modifications were needed, to act at that time. He noted that the regulations proposed keep development consient with the standards for development today.

The boards were concerned about the message that adopting maps would send to homeowners- that flood insurance is not needed because the FEMA maps remove you from the flood zone. The board was concerned that property owners understand they still needed to keep their flood insurance and that there could be long term implications and increases to their flood insurance if there was a lapse in coverage. A suggestion was made that the Town adopt the maps and model ordinance and take their time in reviewing the ordinance. Staff responded that this would create a “gap” in development where people could construct in a way that would put them at risk for flooding.

There was a question on the mapping of the flood zones and whether the Town would have two maps. This potentially could be confusing to property owners and developers. Mr. Zehner responded that we would only utilize the FEMA maps. He further explained that property owners would not be able to just look at the FEMA map and use it regulatory purposes for any community in Dare County. That is why the LES has been developed and the Town has recommended an LES east and west of 12

Mayor Cahoon suggested that we develop an elevation requirement map reflecting the LES. Ms. Molly Harrison, Planning Board member, asked why areas of the soundside and causeway that are at high risk for flooding seem to be regulated at a lesser standard than the oceanfront. There was general discussion again about the accuracy of the maps, the process for developing the maps, and resulting need for the local elevation standard.

The boards generally discussed the language specific to substantial improvement/damage with Fin and Feather as an example and it was noted that how the substantial improvement and damage language is applied may be misunderstood.

There was a general concern that legacy structures not be penalized for non-conformities.

Staff requested that any points that the boards wanted to be carried forward to the Planning Board's next meeting in March be submitted to staff so that there is no delay.

Commissioner Renee Cahoon asked specifically about Section 11.43.7.7 and noted concern about the message this conveys and if this encourages people to enclose. Staff felt that with the other ordinance provisions, there would be regulation of enclosures.

Commissioner Fuller asked about Section 11.43.7.9.3. and whether this would mean you could not apply for a variance after the fact. Mr. Zehner noted that the intent of the language appears that it might preclude someone from doing that. However, staff will follow up with the state coordinator about this provision.

Staff requested that any specific comments or concerns be submitted to staff ahead of the Planning Board meeting. Mayor Cahoon requested that a memo summarizing the joint discussion be developed and provided to the Board of Commissioners at their next meeting.

The Board of Commissioners voted to recess to their afternoon meeting and the Planning Board took a brief recess at 10:15 and reconvened at 10:25 a.m.

Public Comment/Audience Response Following Joint Discussion

Porter Graham, Government Affairs Director for the Outer Banks Home Builders Association thanked the Boards for participating in the discussion of the proposed Flood Ordinance. The OBHBA is concerned about risk to homes that will be newly in the X zone. They want to ensure that property owners keep their flood insurance. Their principal concern is on the building standard element (LES) – 10 ft standard on X and shaded X offset primary vs. proposed 8 ft (Dare County - Donna Creef). Did planning staff Look a future sea level rise in addition to historical data? Lateral additions requirements – Duck is the only other municipality to not allow lateral additions at the same level. Mr. Porter thanked Mr. Zehner for communicating with the Association.

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF NAGS HEAD, NORTH CAROLINA PERTAINING TO FLOOD DAMAGE PREVENTION

ARTICLE I. Purpose(s) and Authority.

WHEREAS, The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143, Parts 3, 5 and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes (NCGS), delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety and general welfare of its citizenry; and

WHEREAS, The flood prone areas of the Town are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare; and

WHEREAS, The Town of Nags Head desires to protect human life, safety and health; minimize expenditure of public money for costly flood control projects; minimize the need for rescue and relief efforts associated with flooding; minimize prolonged business losses and interruptions; minimize damage to public facilities and utilities; minimize damage to private and public property due to flooding; maintain the natural and beneficial functions of floodplains; and mitigate flood risks in Nags Head by implementing local elevation standards for all Special Flood Hazards Areas and Shaded X and X flood zones.

WHEREAS, The Town of Nags Head 2017 Comprehensive Plan includes goals and policies that support the Town's continued participation in the National Flood Insurance Program (NFIP) and ensure the Town is a disaster resilient community that can survive, recover from, and thrive after a natural or man-made disaster; 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 Towns Unified Development Ordinance as stated below.

ARTICLE II. 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 **Article 11, Environmental Regulations**, **Part III. Flood Damage Prevention** shall be deleted in its entirety and replaced with the following:

PART III. FLOOD DAMAGE PREVENTION

SECTION 11.41 STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.

11.41.1. Statutory Authorization.
The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143, Parts 3, 5 and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes (NCGS), delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety and general welfare of its citizenry. Therefore, the Board of Commissioners does ordain as follows in this Article 11, Part III.

11.41.2. Findings of Fact.

> ***11.41.2.1.*** The flood prone areas of the Town are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
>
> ***11.41.2.2.*** These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

11.41.3. Statement of Purpose.
It is the purpose of this Article 11, Part III to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

> ***11.41.3.1.*** Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
>
> ***11.41.3.2.*** Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
>
> ***11.41.3.3.*** Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of floodwaters;
>
> ***11.41.3.4.*** Control filling, grading, dredging and other development which may increase erosion or flood damage; and
>
> ***11.41.3.5.*** Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters, or which may increase flood hazards to other lands.

11.41.4. Objectives.
The objectives of this article are to:

> ***11.41.4.1.*** Protect human life, safety and health;

11.41.4.2. Minimize expenditure of public money for costly flood control projects;

11.41.4.3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

11.41.4.4. Minimize prolonged business losses and interruptions;

11.41.4.5. Minimize damage to public facilities and utilities, such as water and gas mains, electric, telephone, cable and sewer lines, streets and bridges, located in flood prone areas;

11.41.4.6. Minimize damage to private and public property due to flooding;

11.41.4.7. Make flood insurance available to the community through the National Flood Insurance Program (NFIP);

11.41.4.8. Maintain the natural and beneficial functions of floodplains;

11.41.4.9. Help maintain a stable tax base by providing for the sound use and development of flood-prone areas; and

11.41.4.10. To ensure that potential homebuyers are notified that property is in a Special Flood Hazard Area (SFHA) or other areas prone to flooding.

11.41.4.11. Mitigate flood risks in Nags Head by implementing local elevation standards for all Special Flood Hazards Areas and Shaded X and X flood zones.

SECTION 11.42 GENERAL PROVISIONS.

11.42.1. Lands to Which this Article 11, Part III Applies.

This Article 11, Part III shall apply to all areas within the jurisdiction of the Town, including Extra-Territorial Jurisdictions (ETJs) as allowed by law.

11.42.2. Basis for Establishing the Special Flood Hazard Areas.

The special flood hazard areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) dated June 19, 2020 for Town of Nags Head, Dare County and associated DFIRM panels, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of this ordinance, and all revisions thereto after January 1, 2021. Future revisions to the FIS and DFIRM panels that do not change flood hazard data within the jurisdictional authority of the Town of Nags Head are also adopted by reference and declared a part of this ordinance. Subsequent Letter of Map Revisions (LOMRs) and/or Physical Map Revisions (PMRs) shall be adopted within 3 months.

11.42.3. Establishment of a Local Elevation Standard (LES)

The Local Elevation Standard means a locally adopted elevation level used as the Regulatory Flood Protection Elevation (RFPE) to mitigate flood hazards in the Shaded X, X, AE, AO, VE, as depicted on the FIRMs for Nags Head. These areas may be vulnerable to flooding from storm surge, wind-driven tides, and excessive rainfall. Many of these areas have repetitively flooded and continue to remain at risk to flooding. Therefore, an elevation standard and other floodplain development standards are needed to meet the objectives of this Section as identified in 11.41.4.

11.42.3.1. In Nags Head the RFPE is as defined as:

11.42.3.1.1. Coastal High Hazard Areas (CHHA)- Properties located to the east of NC 12 and SR 1243 are located in an active oceanfront environment that is vulnerable to storm surge, erosion, sea level rise, and other hazards. These areas have special flood hazards associated with high velocity waters from storm surges or seismic activity and, therefore, the RFPE is 12 feet NAVD 1988.

11.42.3.1.2. Properties west of NC 12 and SR 1243- The RFPE for properties located west of NC 12 and SR 1243 and in flood zones Shaded X, X, or AE, is 10 feet NAVD 1988. This includes properties abutting US 64, also known as the Causeway.

11.42.4. Establishment of Floodplain Development Permit.
A floodplain development permit shall be required in conformance with the provisions of this Part prior to the commencement of any development activities within the AE, AO, VE, Shaded X or X zone.

11.42.5. Compliance.
No structure or land shall hereafter be located, extended, converted, altered or developed in any way without full compliance with the terms of this Part and other applicable regulations.

11.42.6. Abrogation and Greater Restrictions.
This Part is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this Part and another provision conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

11.42.7. Interpretation.
In the interpretation and application of this Part, all provisions shall be considered as minimum requirements; liberally construed in favor of the Board of Commissioners; and deemed neither to limit nor repeal any other powers granted under state statutes.

11.42.8. Warning and Disclaimer of Liability.
The degree of flood protection required by this Part is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur; actual flood heights may be increased by manmade or natural causes. This Part does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood

damages. This Part shall not create liability on the part of the Town or by an officer or employee thereof for any flood damages that result from reliance on this Part or any administrative decision lawfully made thereunder.

11.42.9. Penalties for Violations.
Violation of the provisions of this Part or failure to comply with of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a Class 1 misdemeanor pursuant to NC G.S. § 143-215.58. Any person who violates this article or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than $500.00 or imprisoned for not more than 30 days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town from taking such other lawful action as it necessary to prevent or remedy any violation. Other lawful actions may include, but shall not be limited to, those provisions in Section 1.10, Violation of UDO Regulations.

SECTION 11.43 ADMINISTRATION.

11.43.1. Designation of Floodplain Administrator.
The Chief Building Inspector or his designee, hereinafter referred to as the "Floodplain Administrator", is hereby appointed to administer and implement the provisions of this Part. In instances where the Floodplain Administrator receives assistance from others to complete tasks to administer and implement this ordinance, the Floodplain Administrator shall be responsible for the coordination and community's overall compliance with the National Flood Insurance Program and the provisions of this ordinance.

11.43.2. Duties and Responsibilities of the Floodplain Administrator.
Duties of the floodplain administrator shall include, but not be limited to:

> ***11.43.2.1.*** Review all floodplain development applications and issue permits for all proposed development Shaded X, X, AE, AO, and VE flood zones to assure that all requirements of this Part have been satisfied.
>
> ***11.43.2.2.*** Review all proposed development to assure that all necessary local, state and federal permits have been received, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
>
> ***11.43.2.3.*** Notifying adjacent communities and the North Carolina Department of Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alterations or relocation of a watercourse and submitting evidence of such notification to FEMA.
>
> ***11.43.2.4.*** Assuring that maintenance is provided within the altered or relocated portion of such watercourse so that the flood-carrying capacity is maintained.

11.43.2.5. Obtaining the actual elevation (in relation to NAVD 1988) of the reference level (including the basement) and all attendant utilities of all new or substantially improved structures in accordance with subsection 11.43.5.1 of this section.

11.43.2.6. Obtaining the actual elevation (in relation to NAVD 1988) to which all new or substantially improved structures and utilities have been floodproofed in accordance with subsection 11.43.5.1 of this section.

11.43.2.7. Obtain actual elevation (in relation to NAVD 1988) of all public utilities in accordance with subsection 11.43.5.1 of this section.

11.43.2.8. When floodproofing is utilized for a particular structure, the floodplain administrator shall obtain certifications from a registered professional engineer or architect in accordance with subsection 11.43.5.2 of this section and subsection 11.44.2.2.

11.43.2.9. Where interpretation is needed as to the exact location of the boundaries of the special flood hazard areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) or Shaded X or X flood zones, the floodplain administrator shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this Part.

11.43.2.10. When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel or structure in a special flood hazard area is above the base flood elevation, advise the property owner of the option to apply for a letter of map amendment (LOMA) from FEMA. However, if the property is to be removed from the V Zone it must not be located seaward of the landward toe of the primary frontal dune. Maintain a copy of the letter of map amendment (LOMA) issued by FEMA in the floodplain development permit file.

11.43.2.11. Making on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of this article and terms of the permit. In exercising this power, the floodplain administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the Town at any reasonable hour for the purposes of inspection or other enforcement action.

11.43.2.12. Issue stop work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this Part, the floodplain administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work. The stop-work order shall state the specific work to be stopped, the specific reasons(s) for the stoppage, and the conditions(s) under

which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.

11.43.2.13. Revoke floodplain development permits as required. The floodplain administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of any applicable state or local law may be revoked.

11.43.2.14. Permanently maintain all records pertaining to the administration of this Part and making these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.

11.43.2.15. Providing the North Carolina Department of Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program with two copies of the maps delineating new corporate limits within six months from date of annexation or change in corporate boundaries.

11.43.2.16. Make periodic inspections throughout the jurisdiction of the Town. The floodplain administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

11.43.2.17. Follow through with corrective procedures of subsection 11.43.6.

11.43.2.18. Review, provide input, and make recommendations for variance requests.

11.43.2.19. Maintain a current map repository to include, but not limited to, historical and effective FIS report, historical and effective FIRM and other official flood maps and studies adopted in accordance with subsection 11.42.2 of this Part, including any revisions thereto including letters of map change, issued by FEMA. Notify state and FEMA of mapping needs.

11.43.2.20. Coordinate revisions to FIS reports and FIRMS, including letters of map revision based on fill (LOMR-F) and letters of map revision (LOMR).

11.43.3. Floodplain Development Application Requirements.
Application for a floodplain development permit shall be made to the floodplain administrator on forms prior to any development activities. The following items shall

be presented to the floodplain administrator to apply for a floodplain development permit:

11.43.3.1. Two copies of a plot plan drawn to scale, along with an electronic version, which shall include, but shall not be limited to, the following specific details of the proposed floodplain development; at the discretion of the floodplain administrator, such plot plans shall be certified by a North Carolina registered land surveyor or professional engineer:

11.43.3.1.1. The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, location of fill materials, storage areas, drainage facilities, and other development;

11.43.3.1.2. The boundary of any special flood hazard area or any Shaded X or X Zone as delineated on the FIRM or other flood map as determined in subsection 11.42.2 or a statement that the entire lot is within the special flood hazard area;

11.43.3.1.3. Flood zone(s), including any Shaded X or X zone, designation of the proposed development area as determined on the FIRM or other flood map as determined in subsection 11.42.2;

11.43.3.1.4. The base flood elevation (BFE) and/or the Regulatory Flood Protection Elevation (RFPE) where provided as set forth in subsection 11.42.2;

11.43.3.1.5. The old and new location of any watercourse that will be altered or relocated as a result of proposed development; and

11.43.3.1.6. The boundary and designation date of the CBRS area or OPA, if applicable.

11.43.3.2. Proposed elevation, and method thereof, of all development including but not limited to:

11.43.3.2.1. The elevation in relation to NAVD 1988 of the proposed reference level (including the basement) of all new and substantial improvements; and

11.43.3.2.2. Elevation in relation to NAVD 1988 to which any non-residential structure in zone AE, AO, Shaded X, or X Zone will be floodproofed; and

11.43.3.2.3. Elevation in relation to NAVD 1988 to which any proposed utility systems will be elevated or floodproofed.

11.43.3.3. If floodproofing, a floodproofing certificate (FEMA Form 086-0-34) with supporting data, an operational plan, and an inspection and maintenance

plan that includes, but is not limited to, installation, exercise, and maintenance of floodproofing measures.

11.43.3.4. A foundation plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this Part are met. These details include but are not limited to:

> ***11.43.3.4.1.*** The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation, open foundation on columns/posts/piers/piles/shear walls).
>
> ***11.43.3.4.2.*** Openings to facilitate equalization of hydrostatic flood forces on walls in accordance with subsection 11.44.2.4 when solid foundation perimeter walls are used in zones AE or Shaded X or X Zone.
>
> ***11.43.3.4.3.*** The following, in coastal high hazard areas, in accordance with subsection 11.44.2.4.4 and subsection 11.44.3:
>
> > ***11.43.3.4.3.1.*** V-Zone certification with accompanying plans and specifications verifying the engineered structure and any breakaway wall designs (breakaway wall designs are only for accessory structures). In addition, prior to the Certificate of Compliance/Occupancy issuance, the floodplain administrator may require a registered professional engineer or architect to certify that the finished construction is compliant with the design, specifications and plans for VE Zone construction if determined necessary.
> >
> > ***11.43.3.4.3.2.*** Plans for open wood lattice or insect screening, if applicable.
> >
> > ***11.43.3.4.3.3.*** Plans for non-structural fill, if applicable. If non-structural fill is proposed, it must demonstrate through coastal engineering analysis that the proposed fill would not result in any increase in the base flood elevation or otherwise cause adverse impacts by wave ramping and deflection onto the subject structure or adjacent properties.

11.43.3.5. Usage details of any enclosed areas below the regulatory flood protection elevation.

11.43.3.6. Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.

11.43.3.7. Certification that all other local, state and federal permits required prior to floodplain development permit issuance (wetlands, endangered

species, erosion and sedimentation control, Coastal Area Management Act (CAMA), riparian buffers, mining, etc.) have been received.

11.43.3.8. Documentation for placement of recreational vehicles and/or temporary structures, when applicable, to ensure subsections 11.44.2.3 and 11.44.2.5 of this Part are met.

11.43.3.9. A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects on properties located both upstream and downstream; and a map (if not shown on the plot plan) showing the location of the proposed watercourse alteration and relocation.

11.43.3.10. In Shaded X and X zones, a survey prepared by a licensed North Carolina surveyor may be used to demonstrate the natural grades of the parcel relative to the RFPE.

11.43.4. Floodplain Development Permit Requirements.
The Floodplain Development Permit shall include, but not be limited to:

11.43.4.1. A complete description of all the development to be permitted under the floodplain development permit. (e.g. house, garage, pool, septic, bulkhead, cabana, pier, bridge, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, etc.).

11.43.4.2. The flood zone determination for the proposed development per available data specified in subsection 11.42.2.

11.43.4.3. The regulatory flood protection elevation required for the reference level and all attendant utilities.

11.43.4.4. The regulatory flood protection elevation required for the protection of all public utilities.

11.43.4.5. All certification submittal requirements with timelines.

11.43.4.6. The flood openings requirements, if in zones AE, Shaded X, or X Zone.

11.43.4.7. Limitations of use of the enclosures below the lowest floor, not to exceed 300 square feet in area, (i.e. parking, building access and limited storage only).

11.43.4.8. A statement, if in zone VE, that there shall be no alteration of sand dunes which would increase potential flood damage.

11.43.4.9. A statement, if in zone VE, that there shall be no fill used for structural support.

11.43.4.10 A statement, that all materials below BFE/RFPE must be flood resistant materials.

11.43.5. Floodplain Development Certification Requirements.

11.43.5.1. Elevation Certificates for AE, AO, VE, Shaded X, and X Zones.

11.43.5.1.1. An elevation certificate (FEMA Form 086-0-33) may be required prior to the actual start of any new construction if determined necessary by the floodplain administrator. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of elevation of the reference level, in relation to NAVD 1988. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.

11.43.5.1.2. An elevation certificate (FEMA 086-0-33) is required after the reference level is established. Within 21 calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the reference level, in relation to NAVD 1988. Any work done within the 21 calendar-day-period and prior to submission of the certification shall be at the permit holder's risk. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make the required corrections shall be cause to issue a stop-work order for the project.

11.43.5.1.3. A final Finished Construction elevation certificate (FEMA 086-0-33) is required after construction is completed and prior to certificate of compliance/occupancy issuance. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to certificate of compliance/occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance to a certificate of compliance/occupancy. The Finished Construction Elevation Certificate certifier shall provide at least 2 photographs showing the front and rear of the building taken within 90 days from the date of certification. The photographs must be taken with views confirming the building description and diagram number provided in Section A. To the

extent possible, these photographs should show the entire building including foundation. If the building has split-level or multi-level areas, provide at least 2 additional photographs showing side views of the building. In addition, when applicable, provide a photograph of the foundation showing a representative example of the flood openings or vents. All photographs must be in color and measure at least 3" × 3". Digital photographs are acceptable.

11.43.5.1.4. For Shaded X and X flood zones east of NC 12 and SR 1243, the submission of the under construction elevation certificate may be waived if a survey of the parcel was used to certify the natural grade of the parcel was to or above 12 feet at the time of permit application. For Shaded X and X flood zones west of NC 12 and SR 1243, the submission of the under construction elevation certificate may be waived if a survey of the parcel was used to certify the natural grade of the parcel was to or above 10 feet at the time of permit application. In all cases, a finished construction elevation certificate is required at the completion of the project.

11.43.5.2. Floodproofing Certificate. If non-residential floodproofing is used to meet the regulatory flood protection elevation requirements, a floodproofing certificate (FEMA 086-0-33), with supporting data, an operational plan, and an inspection and maintenance plan is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities in relation to NAVD 1988. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The floodplain administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a certificate of compliance/occupancy.

11.43.5.3. A final Finished Construction Floodproofing Certificate (FEMA Form 086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the issuance of a Certificate of Compliance/Occupancy. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD 1988. Floodproofing certificate shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to Certificate of Occupancy. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in

accordance with the certified design shall be cause to deny a Certificate of Compliance/Occupancy.

11.43.5.4. If a watercourse is to be altered or relocated, a description of the extent of the watercourse alteration or relocation, a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall be submitted by the permit applicant prior to issuance of a floodplain development permit.

11.43.5.5. Certification Exemptions. The following structures, if located within zones AE, AO, and Shaded X or X, are exempt from the elevation/floodproofing certification requirements specified in subsections 11.43.5.1.1 and 11.43.5.1.2 above:

> ***11.43.5.5.1.*** Recreational vehicles meeting requirements of subsection 11.44.2.3;
>
> ***11.43.5.5.2.*** Temporary structures meeting requirements of subsection 11.44.2.5; and
>
> ***11.43.5.5.3.*** Accessory structures less than 150 square feet meeting or Insert Cost of Structure ($5,000 recommended) or less and meeting requirements of requirements of subsection 11.44.2.6.

11.43.5.6. A V-Zone certification with accompanying design plans and specifications is required prior to issuance of a floodplain development permit within coastal high hazard areas. It shall be the duty of the permit applicant to submit to the floodplain administrator said certification to ensure the design standards of this Part are met. A registered professional engineer or architect shall develop or review the structural design, plans and specifications for construction and certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this Part. This certification is not a substitute for an elevation certificate. In addition, prior to the Certificate of Compliance/Occupancy issuance, the floodplain administrator may require a registered professional engineer or architect to shall certify that the finished construction is compliant with the design, specifications and plans for VE Zone construction if determined necessary.

11.43.5.7. Determinations for existing buildings and structures. For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

11.43.5.7.1. Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;

11.43.5.7.2. Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;

11.43.5.7.3 Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and

11.43.5.7.4. Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the NC Building Code and this ordinance is required.

11.43.6. Corrective Procedures.

11.43.6.1. Violations to be corrected. When the floodplain administrator finds violations of applicable state and local laws, it shall be his duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.

11.43.6.2. Actions in event of failure to take corrective action. If the owner of a building or property shall fail to take prompt corrective action, the floodplain administrator shall give the owner written notice, by certified or registered mail, to his last known address or by personal service that:

11.43.6.2.1. The building or property is in violation of the flood damage prevention regulations;

11.43.6.2.2. A hearing will be held before the floodplain administrator at a designated place and time, not later than ten (10) working days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and

11.43.6.2.3. Following the hearing, the floodplain administrator may issue such order to alter, vacate or demolish the building; or to remove fill as appears appropriate.

11.43.6.3. Order to take corrective action. If, upon a hearing held pursuant to the notice prescribed above, the floodplain administrator shall find that the

building or development is in violation of this Part, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within such period not less than sixty (60) days, nor more than one hundred and eighty (180) calendar days, as the floodplain administrator may prescribe; provided, however, that where the floodplain administrator finds that there is imminent danger to life or other property, he or she may issue an order that corrective action be taken in such lesser period as may be feasible.

11.43.6.4. Appeal. Any owner who has received an order to take corrective action may appeal the order to the board of adjustment by giving notice of appeal in writing to the floodplain administrator and the Town Clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the floodplain administrator shall be final. The Board of Adjustment shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

11.43.6.5. Failure to comply with order. If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been taken, or fails to comply with an order of the board of adjustment following an appeal, the owner shall be guilty of a misdemeanor and shall be punished in the discretion of the court.

11.43.7. Variance Procedures.

Variance procedures shall be applied in AE, AO, VE, and Shaded X and X flood zones in accordance with Section 3.10, Variances of this UDO and the following additional provisions:

11.43.7.1. The Board of Adjustment, as established by the Town, shall hear and decide requests for variances from the requirements of this Part.

11.43.7.2. Any person aggrieved by the decision of the Board of Adjustment may appeal such decision to superior court, as provided in NCGS Chapter 7A.

11.43.7.3. Variances may be issued for:

11.43.7.3.1. The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

11.43.7.3.2. Functionally dependent facilities if determined to meet the definition as stated in Appendix A, provided provisions of subsections 11.43.7.10.2 and 11.43.7.10.3 have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or

11.43.7.3.3. Any other type of development provided it meets the requirements stated in this section.

11.43.7.4. In passing upon variances, the Board of Adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this Part and the:

11.43.7.4.1. Danger that materials may be swept onto other lands to the injury of others;

11.43.7.4.2. Danger to life and property due to flooding or erosion damage;

11.43.7.4.3. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

11.43.7.4.4. Importance of the services provided by the proposed facility to the community;

11.43.7.4.5. Necessity to the facility of a waterfront location as defined under Appendix A as a functionally dependent facility, where applicable;

11.43.7.4.6. Availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

11.43.7.4.7. Compatibility of the proposed use with existing and anticipated development;

11.43.7.4.8. Relationship of the proposed use to the Town's Comprehensive Plan and floodplain management program for that area;

11.43.7.4.9. Safety of access to the property in times of flood for ordinary and emergency vehicles;

11.43.7.4.10. Expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

11.43.7.4.11. Costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

11.43.7.5. A written report addressing each of the above factors shall be submitted with the application for a variance.

11.43.7.6. Upon consideration of the factors listed in subsection 11.43.7.4 of this Part and the purposes of this Part, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Part.

11.43.7.7. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the RFPE and the elevation to which the structure is to built and that such construction below the RFPE increases risks to life and property, and that the issuance of a variance to construct a structure below the RFPE will result in increased premium rates for flood insurance up to $25.00 per $100.00 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their insurance.

11.43.7.8. The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

11.43.7.9. Conditions for variances.

11.43.7.9.1. Variances shall not be issued when the variance will make the structure in violation of other federal, state or local laws, regulations or ordinances.

11.43.7.9.2. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

11.43.7.9.3. Variances shall only be issued prior to development permit approval.

11.43.7.9.4. Variances shall only be issued upon:

11.43.7.9.4.1. A showing of good and sufficient cause;

11.43.7.9.4.2. A determination that failure to grant the variance would result in exceptional hardship; and

11.43.7.9.4.3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances

11.43.7.10. A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in special flood hazard areas provided that all of the following conditions are met:

11.43.7.10.1. The use serves a critical need in the community;

11.43.7.10.2. No feasible locations exist for the use outside the SFHA;

11.43.7.10.3. The reference level of any structure is elevated or floodproofed to at least the RFPE;

11.43.7.10.4. The use complies with all other applicable federal, state and local laws; and

11.43.7.10.5. The Town has notified the Secretary of the North Carolina Department of Public Safety of its intention to grant a variance at least 30 calendar days prior to granting the variance.

SECTION 11.44 PROVISIONS FOR FLOOD HAZARD REDUCTION.

11.44.1. General Standards.
The following provisions are required in Shaded X, X, AE, AO, and VE flood zones:

11.44.1.1. All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure.

11.44.1.2. All new construction or substantial improvements shall be constructed with materials and utility equipment resistant to flood damage in accordance with the FEMA Technical Bulletin 2, Flood Damage-Resistant Materials Requirements.

11.44.1.3. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damages.

11.44.1.4. All new electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities shall be located at or above the RFPE or designed and/or installed so as to prevent water from entering or accumulating within the components during occurrence of base flood. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility, cable boxes, appliances (washers, dryers, refrigerators, freezers, freezers, etc.), hot water heaters, and electric outlets/switches.

11.44.1.4.1. Replacements that are part of a substantial improvement, electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall also meet the above provisions.

11.44.1.4.2. Replacements that are for maintenance and not part of a substantial improvement, may be installed at the original location provided the addition and/or improvements only comply with the

standards for new construction consistent with the code and requirements for the original structure.

11.44.1.5. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems.

11.44.1.6. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

11.44.1.7. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

11.44.1.8. Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the Regulatory Flood Protection Elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.

11.44.1.9. New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted except by variance as specified in subsection 11.43.7.10. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in an SFHA only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified according to subsection 11.43.5 of this Part.

11.44.1.10. All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.

11.44.1.11. All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

11.44.1.12. All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

11.44.1.13. All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendment of 1972, 33 U.S.C. 1334.

11.44.1.14. When a structure is partially located in a Special Flood Hazard Area or Shaded X or X flood zone, the entire structure shall meet the requirements for new construction and substantial improvements.

11.44.1.15. When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest RFPE shall apply.

11.44.2. Specific Standards.
In Shaded X, X, AE, AO, and VE flood zones as set forth in subsection 11.42.2 and 11.42.3, the following provisions, in addition to subsection 11.44.1 of this section are required:

11.44.2.1. Residential Construction. New construction or substantial improvement of any residential structure shall have the reference level, including the basement, elevated no lower than the regulatory flood protection elevation, as defined in Appendix A.

11.44.2.2. Non-Residential Construction. New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in Appendix A. Structures located in AE, AO, Shaded X, and X zones may be floodproofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the regulatory flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AO Zones, the floodproofing elevation shall be in accordance Section 11.44.3. and 11.44.5. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the floodplain administrator as set forth in subsection 11.43.5, along with the operational and the inspection and maintenance plan.

11.44.2.3. Recreational Vehicles. Recreational vehicles placed on sites shall either:

11.44.2.3.1. Be on-site for fewer than 180 days; or

11.44.2.3.2. **Be** fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities, and has no permanently attached additions); or

11.44.2.3.3. Meet all the requirements for new construction, including anchoring and elevation requirements of subsection 11.42.3 and subsections 11.44.1 of this section.

11.44.2.4. Elevated Buildings. Fully enclosed areas of new construction and substantially improved structures, which are below the regulatory flood protection elevation in AE, AO, Shaded X, or X Zones:

11.44.2.4.1. Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;

11.44.2.4.2. Shall not be temperature-controlled or conditioned Non-temperature controlled dehumidifiers may be used in enclosed areas and shall not result in the enclosed area being determined to be conditioned space;

11.44.2.4.3. Shall be constructed entirely of flood-resistant materials, up to the regulatory flood protection elevation;

11.44.2.4.4. Shall not, in areas governed by the local elevation standard, exceed 300 "square feet in area" below the reference level with the exception of crawl space construction, and shall also include flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. For the purposes of this requirement, enclosures shall be measured to the outside of the wall framing (to calculate floor area) excluding the thickness of sheathing, siding, or trim applied to the outside of the framing. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:

> ***11.44.2.4.4.1.*** A minimum of two flood openings on different sides of each enclosed area subject to flooding;
>
> ***11.44.2.4.4.2.*** The total net area of all flood openings must be at least one square inch for each square foot of enclosed area subject to flooding or a minimum of one engineered square inch for each square foot of enclosed area for an engineered opening;
>
> ***11.44.2.4.4.3.*** If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
>
> ***11.44.2.4.4.4.*** The bottom of all required flood openings shall be no higher than one foot above the adjacent grade;

11.44.2.4.4.5. Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and

11.44.2.4.4.6. Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

11.44.2.4.5. Shall allow, in coastal high hazard areas (zones VE), open wood latticework or insect screening, provided it is not part of the structural support of the building and is designed so as to breakaway, under abnormally high tides or wave action, without causing damage to the structural integrity of the building.

11.44.2.4.6. Property owners shall be required to execute and record a non-conversion agreement prior to issuance of a building permit declaring that the area below the lowest floor shall not be improved, finished or otherwise converted to habitable space; The Town of Nags Head will have the right to inspect the enclosed area .This agreement shall be recorded with the Dare County Register of Deeds and shall transfer with the property in perpetuity.

11.44.2.4.7*.* Release of restrictive covenant. If a property which is bound by a non-conversion agreement is modified to remove enclosed areas below BFE, then the owner may request release of restrictive covenant after staff inspection and submittal of confirming documentation.

11.44.2.5. Temporary Non-Residential Structures. Prior to the issuance of a floodplain development permit, for a temporary structure, all applicants must submit to the floodplain administrator a plan for the removal of such structures in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the floodplain administrator for review and written approval:

11.44.2.5.1. A specified time period for which the temporary use will be permitted. The time specified should not exceed three months, renewable up to one year;

11.44.2.5.2. The name, address and phone number of the individual responsible for the removal of the temporary structure;

11.44.2.5.3. The time frame prior to the event at which a structure will be removed (i.e.: minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);

11.44.2.5.4. A copy of the contract or other suitable instrument with a trucking company to ensure the availability of removal equipment when needed; and

11.44.2.5.5. Designation, accompanied by documentation, of a location outside the Special Flood Hazard Area to which the temporary structure will be moved.

11.44.2.6. Accessory Structure. Accessory structures (sheds, detached garages, etc.), shall meet the following criteria:

11.44.2.6.1. Accessory structures with floor area located below the regulatory flood protection elevation shall not be used for human habitation, (including working, sleeping, living, cooking or restroom areas).

11.44.2.6.2. Accessory structures shall not be temperature controlled.

11.44.2.6.3. Any portion of an accessory structure located below the regulatory flood protection elevation shall not exceed 300 "square feet in area."

11.44.2.6.4. Accessory structures shall be designed to have low flood damage potential.

11.44.2.6.5. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters.

11.44.2.6.6. Accessory structures shall be firmly anchored in accordance with subsection 11.44.1.1 of this section.

11.44.2.6.7. All service facilities such as electrical and heating equipment shall be installed in accordance with subsection 11.44.1.4 of this section.

11.44.2.6.8. Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation in conformance with subsection 11.44.2.4.3 of this section.

11.44.2.6.9. An accessory structure with a footprint less than 150 square feet or that is a minimal investment of $5,000 or less and that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with subsection 11.43.5.

11.44.2.6.10. Other secondary structures located on the same parcel, in

addition to a principal use structure, which feature conditioned, temperature-controlled areas elevated above the regulatory flood protection elevation shall be constructed consistent with Section 11.44.1. General Standards and 11.44.2. Specific Standards. The certification requirements of 11.43.5.1. Elevation Certificates shall apply.

11.44.2.6.11. Accessory structures, regardless of the size or cost, shall not be placed below elevated buildings in Coastal High Hazard Areas (CHHA).

11.44.2.7. Additions/Improvements/Conversions.

11.44.2.7.1. Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

11.44.2.7.1.1. Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more nonconforming than the existing structure.

11.44.2.7.1.2. A substantial improvement, with modifications/rehabilitations/improvements to the existing structure or the common wall is structurally modified more than installing a doorway, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

11.44.2.7.2. Additions to pre-FIRM or post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.

11.44.2.7.3. Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

11.44.2.7.3.1. Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction consistent with the code and requirements for the original structure.

11.44.2.7.3.2. A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

11.44.2.7.4. Where an independent perimeter load-bearing wall is provided between the addition and the existing building, the addition(s)

shall be considered a separate building and only the addition must comply with the standards for new construction.

11.44.2.7.5. Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a 365 day period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started must comply with the standards for new construction. For each building or structure, the 365 day period begins on the date of the first improvement or repair of that building or structure subsequent to the effective date of this ordinance. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The requirement does not, however, include either:

11.44.2.7.6. Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assume safe living conditions.

11.44.2.7.7. Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

11.44.2.7.8. Areas in existing structures shall not be converted for use as conditioned, temperature controlled space unless the reference level is located to or above the RFPE.

11.44.2.7.9. Additional Standards in Shaded X and X Flood Zones

11.44.2.7.9.1. The substantial improvement/substantial damage definitions as established in Appendix A, Definitions, do not apply to Shaded X and X zones.

11.44.2.7.9.2. In structures located west of NC 12 and SR 1243 where the reference level of existing conditioned, temperature controlled space is located below the RFPE, such space may be increased by 25% at the same level, without having to be elevated to or above the RFPE.

11.44.2.7.9.3. Remodeling or renovations of existing habitable area in structures with the reference level located below the current applicable RFPE that do not increase the footprint of the structure may be authorized at the existing reference level or higher.

11.44.2.7.9.4. Reconstruction of damaged portions of a structure may be authorized at the existing reference level or higher. However, if a structure is entirely demolished, for

whatever reason, the replacement structure shall be constructed to or above the RFPE.

11.44.2.7.9.5. Structures that are relocated on the same site or to another site shall be elevated to or above the applicable RFPE of the lot or to or above the RFPE of the new site.

11.44.2.7.9.6. Areas in existing structures shall not be converted for use as conditioned, temperature controlled space unless the reference level is located to or above the RFPE.

11.44.2.8. Tanks. When gas and liquid storage tanks are to be placed within the Shaded X, X, AE, AO, or VE flood zones, the following criteria shall be met:

11.44.2.8.1. **Underground tanks.** Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty;

11.44.2.8.2. **Above-ground tanks, elevated.** Above-ground tanks in flood hazard areas shall be elevated to or above the Regulatory Flood Protection Elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area;

11.44.2.8.3. **Above-ground tanks, not elevated.** Above-ground tanks that do not meet the elevation requirements of Section 11.44.2.2. of this ordinance shall not be permitted in V or VE Zones. Tanks may be permitted in other flood hazard areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions.

11.44.2.8.4. **Tank inlets and vents.** Tank inlets, fill openings, outlets and vents shall be:

11.44.2.8.4.1. At or above the Regulatory Flood Protection Elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and

11.44.2.8.4.2. Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects

of buoyancy, during conditions of the design flood.

11.44.3. Coastal High Hazard Areas (Zones VE) and Properties East of NC 12 and SR 1243.

Coastal high hazard areas are special flood hazard areas established in subsection 11.42.2 and designated as zones VE.–Properties located to the east of NC 12 and SR 1243 are located in an active oceanfront environment that is vulnerable to storm surge, erosion, sea level rise, and other hazards. These areas have special flood hazards associated with high velocity waters from storm surges or seismic activity and, therefore, in addition to meeting all requirements of Part III Flood Damage Prevention, the following provisions shall apply:

11.44.3.1 All new construction and substantial improvements shall:

11.44.3.1.1. Be located landward of the reach of mean high tide;

11.44.3.1.2. Be located landward of the first line of stable natural vegetation; and

11.44.3.1.3. Comply with all applicable Coastal Area Management Act (CAMA) setback requirements.

11.44.3.2. All new construction and substantial improvements shall be elevated so that the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) is no lower than the regulatory flood protection elevation.

11.44.3.3. All new construction and substantial improvements, including properties with elevations above the regulatory flood protection elevation, shall have the space below the bottom of the lowest horizontal structural member of the lowest floor either be free of obstruction or constructed with open wood latticework or insect screening so as not to impede the flow of floodwaters, provided they are not part of the structural support of the building and are designed so as to breakaway, under abnormally high tides or wave action without causing damage to the elevated portion of the building or supporting foundation system or otherwise jeopardizing the structural integrity of the building in accordance with subsection 11.43.3. The following design specifications shall be met:

11.44.3.3.1. Design plans shall be submitted in accordance with subsection 11.43.3.

11.44.3.3.2. Material shall consist of open wood or plastic lattice having at least 40 percent of its area open, or insect screening.

11.44.3.4. All new construction and substantial improvements shall be securely anchored to an open "pile or column foundation" to allow floodwaters and waves to pass beneath the structure. "All pilings and columns and the

structures attached thereto shall be anchored to resist flotation, collapse and lateral movement due to the effect of wind and water loads acting simultaneously on all building components."

11.44.3.4.1. Water loading values used shall be those associated with the base flood.

11.44.3.4.2. Wind loading values used shall be those required by the current edition of the North Carolina State Building Code.

11.44.3.5. All new construction, initiated after the adoption of this UDO, located east of NC 12 and SR 1243 shall limit the total enclosed habitable living space of individual structures to 5,000 square feet. Enclosed habitable living space for large residential dwellings shall also include any enclosed habitable space that may be present in any accessory structure or accessory dwelling that is located on the same lot as the principal structure.

11.44.3.6. For concrete pads, including patios, decks, parking pads, walkways, driveways, pool decks, etc. the following is required:

11.44.3.6.1. Shall be structurally independent of the primary structural foundation system of the structure and shall not adversely affect structures through redirection of floodwaters or debris; and

11.44.3.6.2. Shall be constructed to breakaway cleanly during design flood conditions, shall be frangible, and shall not produce debris capable of causing damage to any structure. (The installation of concrete in small segments (approximately 4 feet x 4 feet) that will easily break up during the base flood event, or score concrete in 4 feet x 4 feet maximum segments is acceptable to meet this standard); and

11.44.3.6.3. Reinforcing, including welded wire fabric, shall not be used in order to minimize the potential for concreted pads being a source of debris; and

11.44.3.6.4. Pad thickness shall not exceed 4 inches; or

11.44.3.6.5. Provide a Design Professional's certification stating the design and method of construction to be used meet the applicable criteria of this section.

11.44.3.7. For swimming pools and spas, the following is required:

11.44.3.7.1. Be designed to withstand all flood-related loads and load combinations.

11.44.3.7.2. Be elevated so that the lowest horizontal structural member is elevated above the RFPE; or

11.44.3.7.3. Be designed and constructed to break away during design flood conditions without producing debris capable of causing damage to any structure; or

11.44.3.7.4. Be sited to remain in the ground during design flood conditions without obstructing flow that results in damage to any structure.

11.44.3.7.5. Registered design professionals must certify to local officials that a pool or spa beneath or near a VE Zone building will not be subject to flotation or displacement that will damage building foundations or elevated portions of the building or any nearby buildings during a coastal flood.

11.44.3.7.6. Pool equipment shall be located above the RFPE whenever practicable. Pool equipment shall not be located beneath an elevated structure.

11.44.3.8. All elevators, vertical platform lifts, chair lifts, etc., the following is required:

11.44.3.8.1. Elevator enclosures must be designed to resist hydrodynamic and hydrostatic forces as well as erosion, scour, and waves.

11.44.3.8.2. Utility equipment in Coastal High Hazard Areas (VE Zones) must not be mounted on, pass through, or be located along breakaway walls.

11.44.3.8.3. The cab, machine/equipment room, hydraulic pump, hydraulic reservoir, counter weight and roller guides, hoist cable, limit switches, electric hoist motor, electrical junction box, circuit panel, and electrical control panel are all required to be above RFPE. When this equipment cannot be located above the RFPE, it must be constructed using flood damage-resistant components.

11.44.3.8.4. Elevator shafts/enclosures that extend below the RFPE shall be constructed of reinforced masonry block or reinforced concrete walls and located on the landward side of the building to provide increased protection from flood damage. Drainage must be provided for the elevator pit.

11.44.3.8.5. Flood damage-resistant materials can also be used inside and outside the elevator cab to reduce flood damage. Use only stainless steel doors and door frames below the BFE. Grouting in of door frames and sills is recommended.

11.44.3.8.6. If an elevator is designed to provide access to areas below the BFE, it shall be equipped with a float switch system that will

activate during a flood and send the elevator cab to a floor above the RFPE.

11.44.3.9. Accessory structures, regardless of size or cost, shall not be permitted below elevated structures.

11.44.3.10. A registered professional engineer, professional land surveyor, or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions contained in subsection 11.43.2, subsections 11.44.3.1 and 11.44.3.2, subsection 11.44.3.4 and subsection 11.44.3.6 of this Part on the current version of the North Carolina "National Flood Insurance Program V-Zone Certification" form or equivalent local version. In addition, prior to the Certificate of Compliance/Occupancy issuance, the floodplain administrator may require a registered professional engineer or architect to-certify the finished construction is compliant with the design, specifications and plans for VE Zone construction if determined necessary.

11.44.3.11. Fill/Grading

11.44.3.11.1. The placement of site-compatible, non-structural fill under or around an elevated building is limited to two (2) feet. Fill greater than two (2) feet must include an analysis prepared by a qualified registered design professional demonstrating no harmful diversion of floodwaters or wave runup and wave deflection that would increase damage to adjacent elevated buildings and structures. Excavated material moved or relocated onsite is considered fill.

11.44.3.11.2. The fill material must be similar and consistent with the natural soils in the area.

11.44.3.11.3. Minor grading and the placement of minor quantities of nonstructural fill, outside the areas referenced in 11.44.3.11.1., may be permitted for landscaping and for drainage purposes under and around buildings and for support of parking slabs, pool decks, patios and walkways.

11.44.3.11.4. Nonstructural fill with finished slopes that are steeper than five (5) units horizontal to one (1) unit vertical shall be permitted only if an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave deflection that would increase damage to adjacent elevated buildings and structures.

11.44.3.12. There shall be no alteration of sand dunes or mangrove stands which would increase potential flood damage.

11.44.3.13*.* Recreational vehicles may be permitted in coastal high hazard areas provided that they meet the recreational vehicle criteria of subsection

11.44.2.3 of this section and the temporary structure provisions of subsection 11.44.2.5 of this section.

11.44.3.14. A deck that is structurally attached to a building or structure shall have the bottom of the lowest horizontal structural member at or above the Regulatory Flood Protection Elevation and any supporting members that extend below the Regulatory Flood Protection Elevation shall comply with the foundation requirements that apply to the building or structure, which shall be designed to accommodate any increased loads resulting from the attached deck. The increased loads must be considered in the design of the primary structure and included in the V-Zone Certification required under Section 11.43.5.6.

11.44.3.15. A deck or patio that is located below the Regulatory Flood Protection Elevation shall be structurally independent from buildings or structures and their foundation systems, and shall be designed and constructed either to remain intact and in place during design flood conditions or to break apart into small pieces to minimize debris during flooding that is capable of causing structural damage to the building or structure or to adjacent buildings and structures.

11.44.3.16. In coastal high hazard areas, development activities other than buildings and structures shall be permitted only if also authorized by the appropriate state or local authority; if located outside the footprint of, and not structurally attached to, buildings and structures; and if analyses prepared by qualified registered design professionals demonstrate no harmful diversion of floodwaters or wave runup and wave deflection that would increase damage to adjacent buildings and structures. Such other development activities include but are not limited to:

11.44.3.16.1. Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures;

11.44.3.16.2. Solid fences and privacy walls, and fences prone to trapping debris, unless designed and constructed to fail under flood conditions less than the design flood or otherwise function to avoid obstruction of floodwaters.

11.44.3.16.3. Docks, piers, and similar structures.

11.44.3.17. No more than four (4) electrical outlets and no more than four (4) electrical switches may be permitted below RFPE unless required by building code.

11.44.5. Standards for Areas Of Shallow Flooding (Zone AO). Located within the Special Flood Hazard Areas established in Article 3, Section B, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and

indeterminate. In addition to Sections 11.44.1. and 11.44.2., all new construction and substantial improvements shall meet the requirements of Section 11.44.3. Coastal High Hazard Areas (Zones VE) and Properties East of NC 12 and SR 1243.

SECTION 11.45 REMEDIES.

Any violation of this Article 11, Part III shall be subject to the remedies as stated in Section 1.10, Violation of UDO Regulations of this UDO.

SECTION 11.46 LEGAL STATUS PROVISIONS.

11.46.1. Effect on Rights and Liabilities Under the Existing Flood Damage Prevention Ordinance.

This Article 11, Part III in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance enacted February 3, 1975 as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this Article 11, Part III shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention ordinance of the Town of Nags Head enacted on February 3, 1975, as amended, which are not reenacted herein are repealed.

11.46.2. Effect Upon Outstanding Floodplain Development Permits.
Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the floodplain administrator or his or her authorized agents before the time of passage of this Article 11, Part III; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this Article 11, Part III.

11.46.3. Severability.
If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

SECTION 11.47 EFFECTIVE DATE.
This ordinance shall become effective June 19, 2020.

SECTION 11.48 ADOPTION CERTIFICATION.
I hereby certify that this is a true and correct copy of the Flood Damage Prevention Ordinance as adopted by the Board of Commissioners of the Town of Nags Head, North Carolina, on the Day (number or text) day of Month, 2020.

WITNESS my hand and the official seal of insert Name, Title, this the Day (number or text) day of Month, 2020.

_____
(signature)

SECTION 11.49 – 11.50 RESERVED.

PART II. That **Appendix A. Definitions** be amended with the addition of the following new terms and definitions in appropriate alphabetical order:

Breakaway wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system (for the purposes of Article 11, Part III, Flood Damage Prevention).

Enclosure/Enclosed Area means that portion of an elevated building below the lowest elevated floor that is either partially or fully shut in by rigid/solid walls and is located either partially or fully below the RFPE.

Local Elevation Standard means a locally adopted elevation level used as the Regulatory Flood Protection Elevation (RFPE) to mitigate flood hazards in the Shaded X, X, AE, AO, VE, as depicted on the FIRMs for Nags Head. These areas may be vulnerable to flooding from storm surge, wind-driven tides, and excessive rainfall. Many of these areas have repetitively flooded and continue to remain at risk to flooding.

Map Repository means the location of the official flood hazard data to be applied for floodplain management. It is a central location in which flood data is stored and managed; in North Carolina, FEMA has recognized that the application of digital flood hazard data products carries the same authority as hard copy products. Therefore, the NCEM's Floodplain Mapping Program websites house current and historical flood hazard data. For effective flood hazard data, the NC FRIS website (http://FRIS.NC.GOV/FRIS) is the map repository, and for historical flood hazard data the FloodNC website (http://FLOODNC.GOV/NCFLOOD) is the map repository.

Secondary Structure means a structure that features habitable conditioned space above the RFPE located on the same parcel as a primary use structure. A secondary structure is not an accessory structure as defined in this section. A secondary structure is subject to the same standards as a primary use structure.

Shaded X Zone means areas of moderate flood hazard shown on the FIRM and are the areas between the limits of the base flood and the 0.2% annual chance for flood. Also commonly referred to as the 500-year flood.

X Zone means the areas of minimal flood hazard shown on the FIRM which are areas outside of the Special Flood Hazards Areas and higher than the elevation of the 0.2% annual flood chance. Also referred to as Unshaded X zone.

PART III. That **Appendix A. Definitions** be amended by deleting the existing definitions for the following terms and replacing with the definitions as provided:

Building means any structure enclosed and isolated by exterior walls constructed or used for residence, business, industry or other purposes. For the purposes of Article 11, Part III, Flood Damage Prevention, see the definition for Structure.

Coastal high hazard area means a Special Flood Hazard Area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on a FIRM, or other adopted flood map as determined in Article 11, Part III, Flood Damage Prevention, as Zone VE, or any property east of NC 12 and SR 1243.

Development means any land disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil or any man-made change to improved or unimproved real estate including buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, not including existing residential or commercial development already in place.

Existing building and existing structure means any building and/or structure for which the “start of construction” commenced before the community entered the NFIP, dated November 10, 1972.

Fill is the depositing of soil, rock or other earthen materials by artificial means, but not including poured slab, asphalt, porous pavement, Turfstone™, or other manmade materials or surfaces designed in association with construction. Excavated material moved or relocated onsite is considered fill.

Flood Insurance Rate Map (FIRM) means an official map of a community issued by the Federal Emergency Management Agency on which both the special flood hazard areas and the risk premium zones applicable to the community are delineated (also see DFRIM).

Floodway encroachment analysis means an engineering analysis of the impact that a proposed encroachment into a floodway or non-encroachment area is expected to have on the floodway boundaries and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and hydraulic models meeting the minimum requirement of the National Flood Insurance Program.

Freeboard means the height added to the BFE to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge or culvert openings, storm surge or precipitation exceeding the base flood and the hydrological effects of urbanization on the watershed. The base flood elevation plus the freeboard establishes the "regulatory flood protection elevation."

Height means the vertical distance measured from the tallest part of a building to the ground at the base of the building. Typically, height is measured from the tallest portion of the roof to the top of the concrete slab. In cases where a concrete slab is not present, height is measured from the tallest part of the roof to the average finished grade using the corners at the base of the building.

- In Shaded X, X, or AE special flood hazard area west of NC 12 and SR 1243, as defined in 11.42.3.1.2, height will be measured from the regulatory flood protection elevation or finished grade, whichever is higher. In cases where there is a ground floor enclosure below the regulatory flood protection elevation, height shall be measured from finished grade.

- In coastal high hazard areas and VE zones east of NC 12 and SR 1243 as defined in 11.42.3.1.1., height shall be measured from regulatory flood protection elevation (lowest horizontal structural member). In cases where the finished grade elevation is above the regulatory flood protection elevation, height shall be measured at approximately eighteen (18) inches above the highest, undisturbed, finished grade directly beneath the structure (free-of-obstruction).

Post-FIRM means construction or other development for which the start of construction occurred on or after December 31, 1974, the effective date of the initial Flood Insurance Rate Map.

Pre-FIRM means construction or other development for which the start of construction occurred before December 31, 1974, the effective date of the initial Flood Insurance Rate Map.

Recreational vehicle (RV) means a vehicle which is built on a single chassis; 400 square feet or less when measured at the largest horizontal projection; designed to be self-propelled or permanently towable by a light-duty truck; designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use; and is fully licensed and ready for highway use.

Reference level is:

(1) The reference level is the bottom of the lowest floor or the bottom of the lowest attendant utility including ductwork, whichever is lower, with only flood resistant materials located below the reference level west of NC 12 and SR 1243.

(2) The reference level is the bottom of the lowest horizontal structural member of the lowest floor for structures in Coastal High Hazard Areas (CHHA) east of NC 12 and SR 1243.

Regulatory flood protection elevation means the Local Elevation Standard (LES). *The Local Elevation Standard is a locally adopted elevation level used as the Regulatory Flood Protection Elevation (RFPE) to mitigate flood hazards in the Shaded X, X, AE, AO, VE, as depicted on the FIRMs for Nags Head. These areas*

may be vulnerable to flooding from storm surge, wind-driven tides, and excessive rainfall. Many of these areas have repetitively flooded and continue to remain at risk to flooding.

Coastal High Hazard Areas (CHHA) - Properties located to the east of NC 12 and SR 1243 are located in an active oceanfront environment that is vulnerable to storm surge, erosion, sea level rise, and other hazards. These areas have special flood hazards associated with high velocity waters from storm surges or seismic activity and, therefore, the RFPE is 12 feet NAVD 1988.

Properties west of NC 12 and SR 1243 - The RFPE for properties located west of NC 12 and SR 1243 and in flood zones Shaded X, X, or AE, is 10 feet NAVD 1988. This includes properties abutting US 64, also known as the Causeway.

Substantial improvement means any combination of repairs, reconstruction, rehabilitation, addition or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

(1) Any correction of existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to ensure safe living conditions; or

(2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure and the alteration is approved by variance issued pursuant to 11.43.7. Variance Procedures.

Technical bulletin and technical fact sheet mean a FEMA publication that provides guidance concerning the building performance standards of the NFIP, which are contained in Title 44 of the U.S. Code of Federal Regulations at Section 60.3. The bulletins and fact sheets are intended for use primarily by State and local officials responsible for interpreting and enforcing NFIP regulations and by members of the development community, such as design professionals and builders. New bulletins, as well as updates of existing bulletins, are issued periodically as needed. The bulletins do not create regulations; rather they provide specific guidance for complying with the minimum requirements of existing NFIP regulations. It should be noted that Technical Bulletins and Technical Fact Sheets provide guidance on the minimum requirements of the NFIP regulations. State or community requirements that exceed those of the NFIP take precedence. Design professionals should contact the community officials to determine whether more restrictive State or local regulations apply to the building or site in question. All applicable standards of the State or local building code must also be met for any building in a flood hazard area.

PART IV. That **Article 4. Development Review Process, Section 4.11 Permit Types** be deleted and replaced with the following:

4.11.3. Floodplain Development Permit.
Floodplain Development Permits are can be issued in combination with a zoning, land disturbance, and/or building permit or as a stand-alone permit for any development within the Special Flood Hazard Area (SFHA) Shaded X, X, AE, AO, and VE flood zones.

PART V. That **Section 4.12.2.1., For All Types of Development Activity**, be deleted and replaced with the following:

4.12.2.1 For All Types of Development Activity.

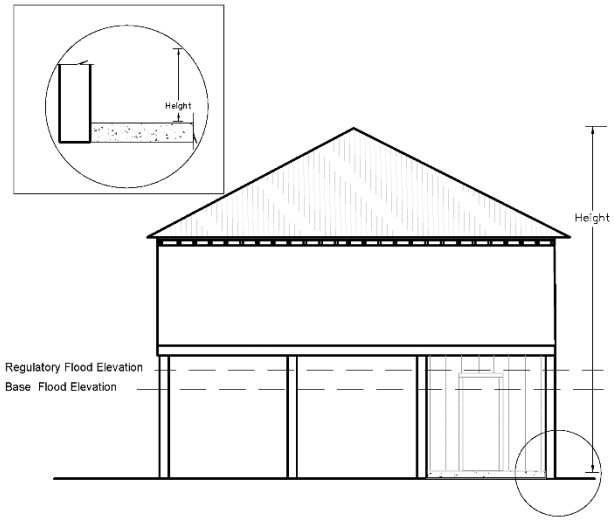
- Site plan/survey
  - Property information- address, ownership, lot number/map book/page reference
  - Existing and proposed development including but not limited to streets, topographic and natural features, and drainage
- Coastal Area Management Act (CAMA) Permit.
- Wastewater approval from Dare County Health Department or NC Department of Environmental Quality.
- Erosion control approval is issued with general development for projects disturbing more than 5,000 square feet (see Article 11, Part II).
- Flood (if in a Special Flood Hazard Area, Shaded X, or X Zone, see Article 11, Part III).
- Stormwater management (for projects which propose filling greater than one foot or for all new commercial construction, see Article 11, Part I).
- Architecture (for residential structures greater than 3,500 square feet, see UDO Section 7.4., Dwelling, Large Residential).
- Utility connections (see Town Code Chapter 44).
- Any other State or Federal Permits

PART VI. That **Section 8.6.4. Building Height and the subsections thereof** be deleted and replaced with the following:

8.6.4. Building Height.

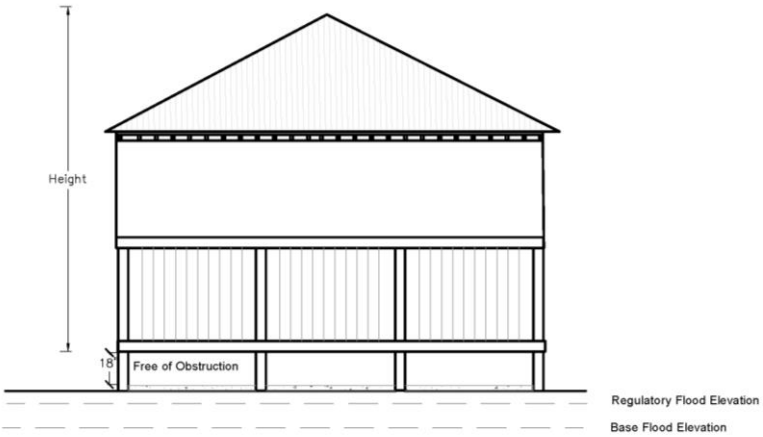
8.6.4.1. Measurement of height. Height means the vertical distance measured from the tallest part of a building to the ground at the base of the building. Typically, height is measured from the tallest portion of the roof to the top of the concrete slab. In cases where a concrete slab is not present, height is measured from the tallest part of the roof to the average finished grade using the corners at the base of the building.

8.6.4.1.1. In Shaded X, X, or AE special flood hazard area west of NC 12 and SR 1243, as defined in 11.42.3.1.2., height will be measured from the regulatory flood protection elevation or finished grade, whichever is higher. In cases where there is a ground floor enclosure below the regulatory flood protection elevation, height shall be measured from finished grade.



8.6.4.1.1. West of NC 12 and SR 1243: Flood Zone- Height

8.6.4.1.2. In coastal high hazard areas and VE zones east of NC 12 and SR 1243 in as defined in 11.42.3.1.1., height shall be measured from regulatory flood protection elevation (lowest horizontal structural member). In cases where the finished grade elevation is above the regulatory flood protection elevation, height shall be measured at approximately eighteen (18) inches above the highest, undisturbed, finished grade directly beneath the structure (free-of-obstruction).



8.6.4.1.2. East of NC 12 and SR 1243: Flood Zone- Height

PART VII. That **Section 11.5.3. Standard for Depth or Elevation of Fill and the subsections thereof** be deleted and replaced with the following:

11.5.3. Standard for Depth or Elevation of Fill.
Any residential or duplex development or redevelopment which utilizes fill shall be limited to the following standards:

11.5.3.1. Properties East of NC 12 and SR 1243.

11.5.3.1.1. Fill shall be subject to the provisions of Section 11.44.3.11.

11.5.3.1.2. Areas of fill exceeding the height of existing grade shall not exceed ten (10) percent of the lot area (see Article 8, District Development Standards), excluding the footprint of the active drainfield and septic system as approved by the Dare County Health Department in accordance with the septic permit. Lot area is defined as that portion of the lot landward of the first line of stable vegetation as defined by CAMA.

11.5.3.1.3. No bulkheads are allowed.

11.5.3.2. Properties West of NC 12 and SR 1243.

11.5.3.2.1. In areas where the most recent Flood Insurance Rate Map (FIRM) provides a base flood elevation for a subject property, fill shall not be permitted to exceed the base flood elevation except in cases where it is placed directly beneath a slab that is designed to meet the base flood elevation depicted on the FIRM. In these instances, fill may exceed the base flood elevation by up to twelve inches (12”) to support a turn-down or thickened edge slab or beneath a slab that is supported by a ring-wall style foundation. Fill placed above the base flood elevation shall not extend beyond the outside edge of the slab.

11.5.3.2.1. In areas where the most recent Flood Insurance Rate Map (FIRM) provides no base flood elevation, fill shall not exceed the amount required for wastewater permits required by the Dare County Health Department, or two feet (2’) above pre-development surface elevation, whichever is greater.

ARTICLE III. 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.

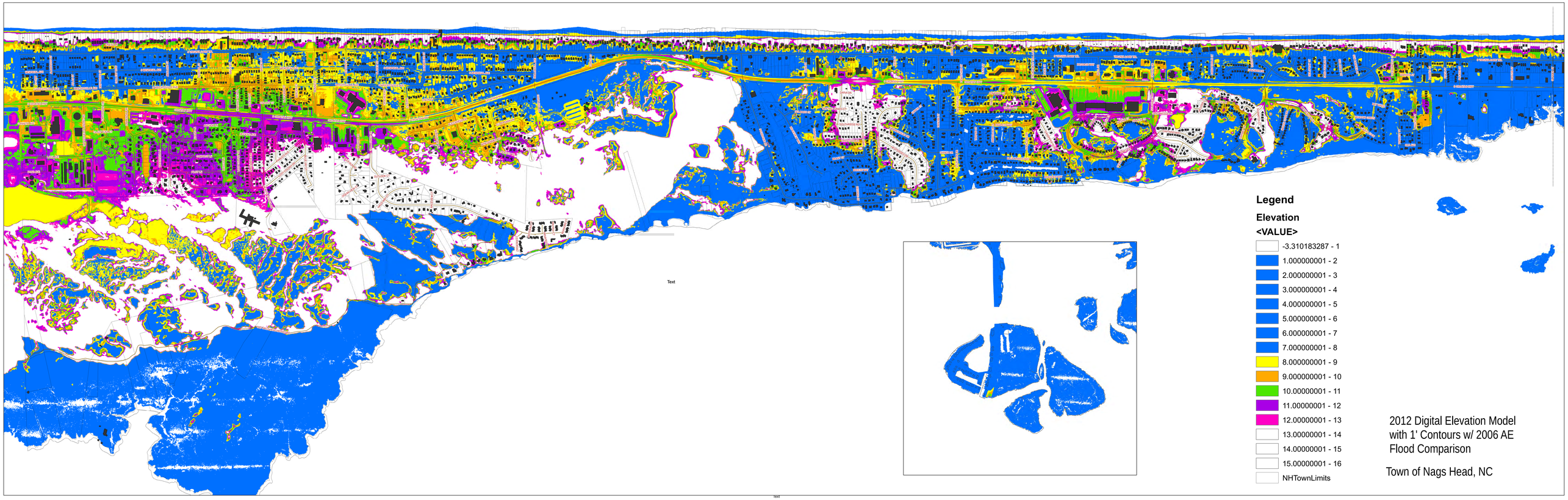
ARTICLE IV. Effective Date.

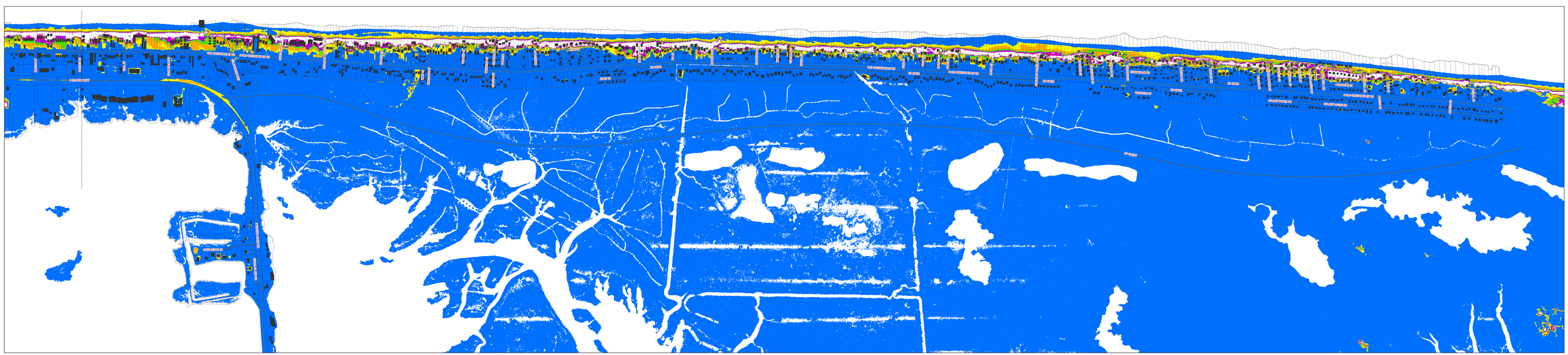
This ordinance amendment shall be in full force and effect upon the date of adoption by the Board of Commissioners.

_____
Benjamin Cahoon, Mayor
Town of Nags Head

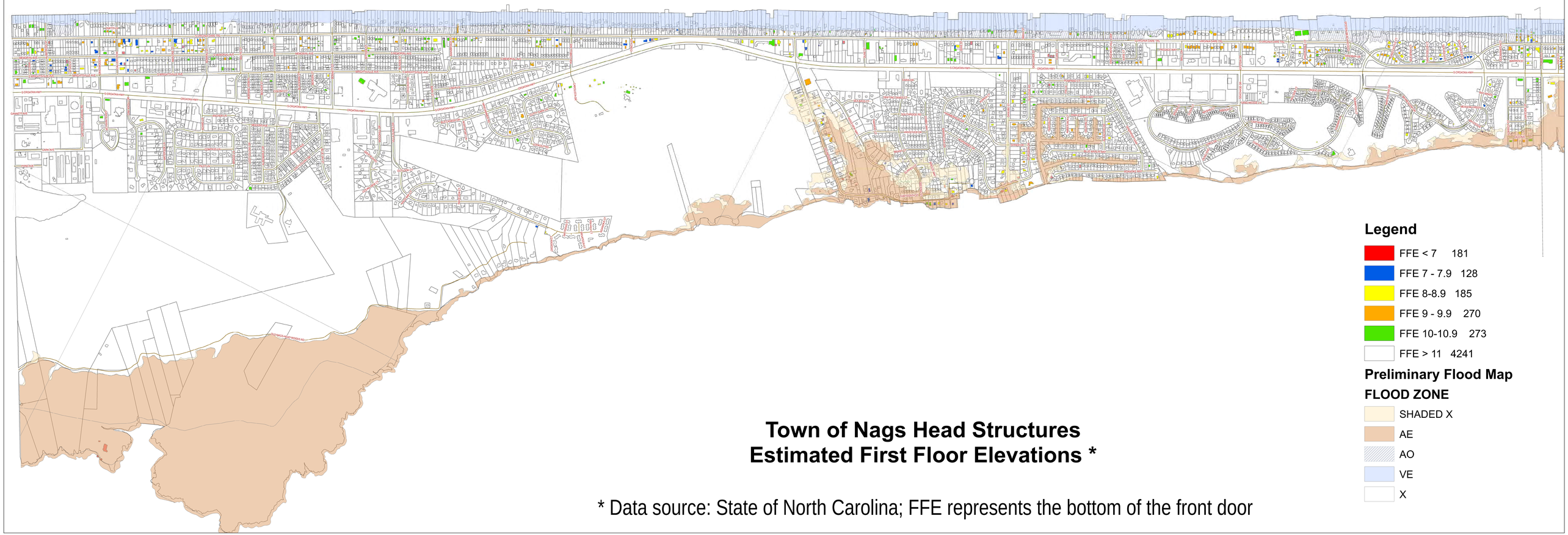
ATTEST: _____
Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:
Town Attorney
Date adopted: _____
Motion to adopt by Commissioner _____
Motion seconded by Commissioner _____
Vote: ____ AYES ____ NAYS





Town of Nags Head Elevation Map



Town of Nags Head Structures
Estimated First Floor Elevations *

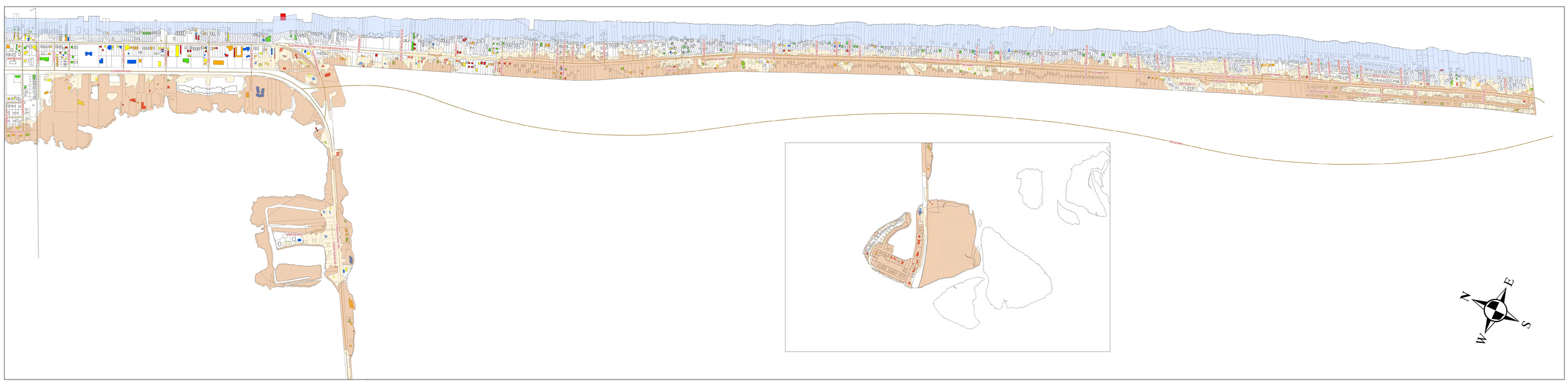
* Data source: State of North Carolina; FFE represents the bottom of the front door

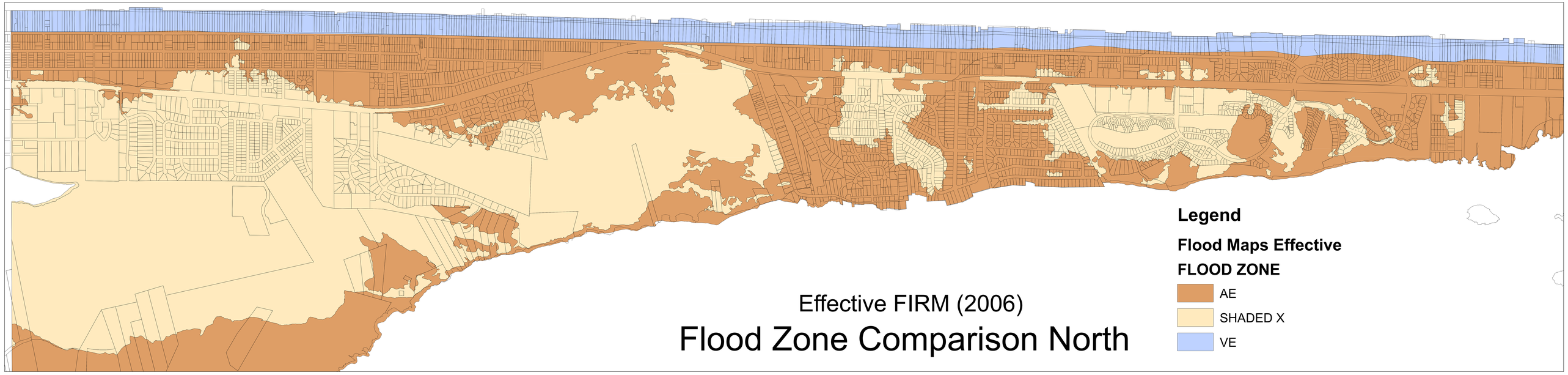
Legend

- FFE < 7 181
- FFE 7 - 7.9 128
- FFE 8-8.9 185
- FFE 9 - 9.9 270
- FFE 10-10.9 273
- FFE > 11 4241

Preliminary Flood Map FLOOD ZONE

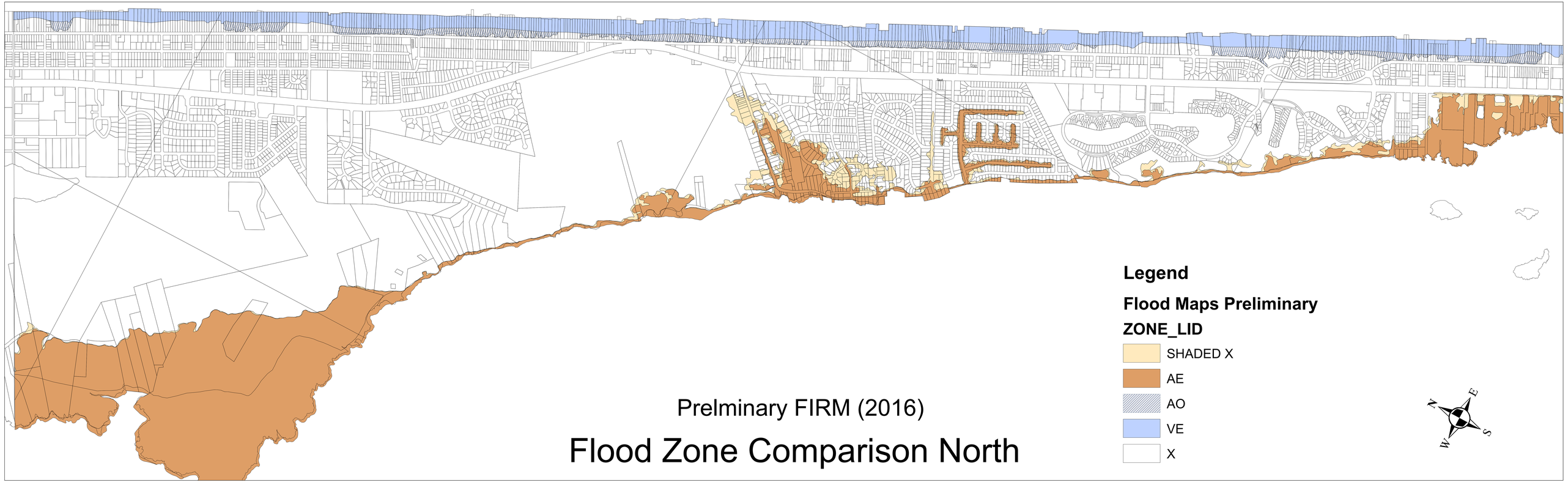
- SHADED X
- AE
- AO
- VE
- X





Effective FIRM (2006)

Flood Zone Comparison North

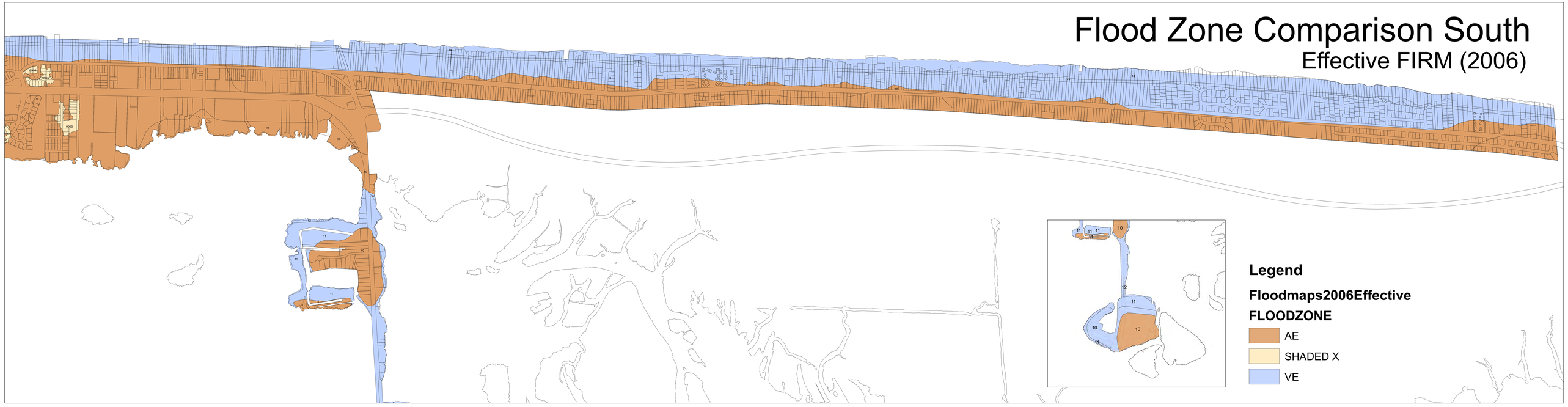


Prelminary FIRM (2016)

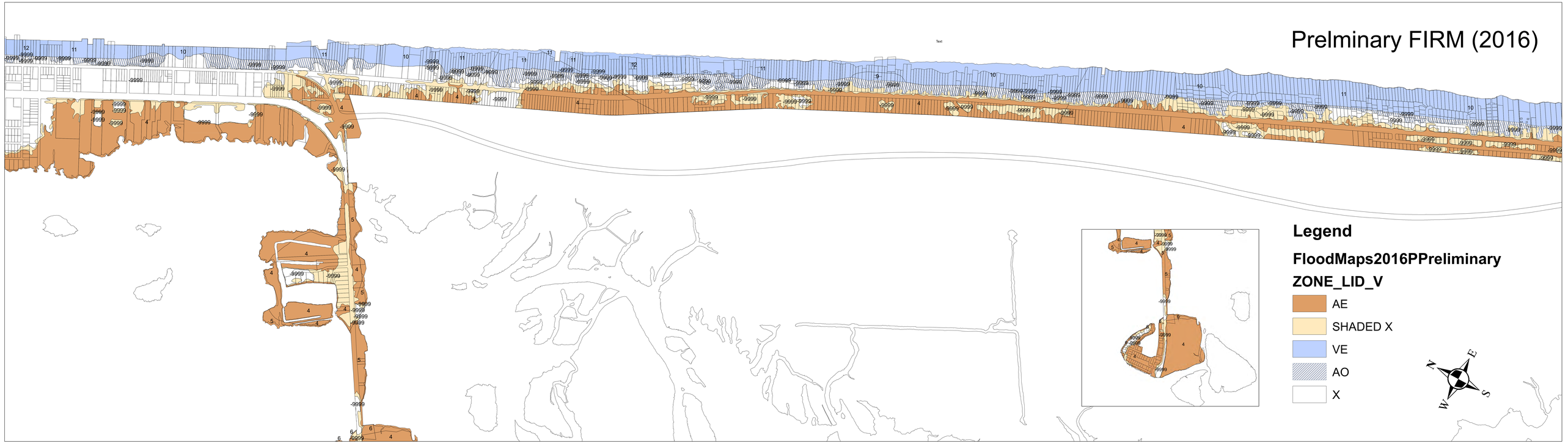
Flood Zone Comparison North

Flood Zone Comparison South

Effective FIRM (2006)



Prelminary FIRM (2016)



BOC ACTIONS
WEDNESDAY, MARCH 4, 2020

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

2. Agenda – The Board approved the March 4th agenda as presented.

3. Recognition:

New employee – Dep Town Manager Andy Garman introduced new employee Information Technology Assistant Karen Snyder who was welcomed by the Board to town employment.

Ten years – Police Chief Phil Webster introduced Dep Police Chief Perry Hale who was recognized by the Board for ten years of service.

Proclamation in support of Safety Week - Dep Fire Chief Shane Hite announced Safety Week which is scheduled for March 9 – 13, 2020; he introduced the Safety Committee members: Brie Floyd, Nancy Carawan, Jackie Hart, Ed Snyder, Perry Hale, Ron Watson, and Ray Schoonmaker. Members Trey Allen, Greg South, Keefe White and Eddie Hawley were not able to attend. Dep Chief Hite detailed the work of the Safety Committee and the upcoming activities planned for Safety Week.

The Board adopted the Safety Week Proclamation as presented and suggested that the committee consider offering a CPR class to the public.

4. Presentation - Dowdy Park Review of 2019 Season and Plans for 2020 Season - Dep Planning Director Kelly Wyatt summarized the 2019 accomplishments of the Town's Art and Culture Committee and detailed the plans for the 2020 year. Ms. Wyatt noted that Dowdy Park Events Coordinator Paige Griffin was unable to attend today's meeting.

5. Presentation - 2nd Annual Community Clean Up – Public Works Office Manager Karen Heagy and Public Works Office Assistant Sue Cummings detailed the upcoming 2nd Annual Community Clean Up which is scheduled for Saturday, March 28th beginning at 8 am at Dowdy Park. Ms. Heagy stated that she hopes next year to schedule a more widely-participated clean up with representatives from each of the town's neighborhoods.

6. Public Comment:

David Bragg, Village at Nags Head resident; since recycling is being incinerated not recycled and it appears the contractor was not forthcoming with this information, he questioned why the town continued the contract; he would like a public forum scheduled with town officials re: trash cart rollback issue – we now pay two people to roll carts back only on the Beach Road; Facebook page – he would like the town to limit postings to only facts – not opinions.

Donny King, Better Beaches OBX; lives in Nags Head and is owner of Ocean Boulevard Restaurant; he is requesting that more sand fencing be installed for additional beach stabilization; the last fencing installed has done its part and is mostly covered; there is a lot of representation of Better Beaches OBX with many volunteers in the audience; he would like the Town to allocate more funds for sand fencing to catch more sand in the right places; he thanked the Board for the town's recent Beach Nourishment Project.

Ellen Heatwole, Seagull Drive; she applauded the town for Beach Nourishment Projects which have been fantastic and sand fencing has done its job; a lot of the grass planted however has not survived; she supports Donny King of Better Beaches OBX and spoke in favor of his initiative to install more sand fencing and grass on the beach.

Lee Nettles, OBVB Executive Director; spoke of proposed ideas for the Soundside Event Site - the proposed facilities are expected to draw new visitors to the area to support year-round visitation to Dare County; septic could be addressed on site but at the expense of green space; no commitments have been made yet; they welcome the opportunity for the town to assist in the project.

7. Consent Agenda – The Consent Agenda was approved as presented and consisted of the following:

- Budget Adjustment #9 to FY 19/20 Budget
- Tax Adjustment Report
- Report of Tax Delinquent List to be advertised
- Approval of minutes
- Resolution clarifying Dare County Control Group / Town MOA of Oct 2015
- Resolution authorizing installment contract to finance the vehicles/equipment in FY 19/20 Budget

- Request for Public Hearing - to consider resolution authorizing entering into an Installment Purchase contract in an amount not to exceed $1,449,793 to finance improvements in FY 19/20 Budget

- Request for Public Hearing - to consider text amendment to the UDO submitted by a property owner to expand the principal sale items from outdoor stands to include reservations/tickets for events

- Request for Public Hearing to consider a text amendment to the UDO to correct identified errors

8. Update from Planning Director - Flood Map ordinance overview - Board members expressed their concern for the revised flood maps which they feel have no sustainability. It was noted that most of the modeling for the maps was done on the oceanfront yet most of the flooding does not occur there.

Mayor Cahoon stated that it would be beneficial for the Board to see the information that is to be presented at next week's informational session as soon as possible; to make sure elevation standards being proposed are adequate.

It was noted that in the Planning update report, Year-To-Date is off on residential construction by over 50%, commercial is down and revenues from construction are more than one third off; Director Zehner was questioned if there is any concept as to what is going on in the home building industry and if this trend in Nags Head is being seen in other towns? Director Zehner stated that he would speak to other municipalities to see if they are seeing a similar trend and to the homebuilders for a possible explanation.

9. Mayor Cahoon - Mayor Cahoon noted that both of the tabled items have been continued by the applicants: Southridge Subdivision Coastal Villas Subdivision Preliminary Plat (to the May 6th Board meeting) and Gone Coastal Shopping Center Major Site Plan (to the April 15th Board meeting).

10. Committee reports:

Comr. Fuller – Dare County Tourism Board (DCTB) – he clarified what Executive Director Lee Nettles was speaking about during Public Comment earlier today: Director Nettles was asking if the Board would consider the following concerning proposals for the Soundside event site:
- Will the Board consider a reduction in parking standards? and

- Will the Board consider allowing central sewage already located in Nags Head (Village at Nags Head) to be extended to the Soundside event site?

It was Board consensus to take no action re: looking into reducing parking standards nor extending central sewage from Village at Nags Head to the Soundside event site.

11. Recommendations for beach nourishment services - The Board passed a motion to invite Moffit & Nichol to make a presentation to the Board, and to authorize the Town Manager to enter into contractual negotiations with them for Beach Nourishment Project surveying services with all relevant material to come back to the Board. The Board also passed a motion to authorize the Town Manager to enter into contractual negotiations with McKim & Creed for Beach Nourishment Project coastal engineering and design services.

12. Proposed Municipal Services Districts (MSD's) - Three new proposed districts were presented:

District 3 – Eighth Street (northern town line) south to Bonnett Street (includes all properties east of Wrightsville Avenue)

District 4 – Bonnett Street south to Gulfstream Street (from Bonnett Street to Bainbridge Street - includes all properties east of Wrightsville Avenue; from Bainbridge Street to Hollowell Street – includes all properties with frontage on and east of Memorial Avenue; from Hollowell Street to Gulfstream Street – includes all properties east of US 158)

District 5 – Gulfstream Street south to southern town line (includes all properties south of Gulfstream Street)

The Board passed a motion to schedule a Public Hearing to consider the proposed MSD's, as presented, to include the addition of Old Nags Head Place in the proposed District 4 - for the May 6th Board meeting.

13. Board/Committee appointments – The Board reappointed Angelina Lowe and John Mascaro to additional three-year terms on the Board of Adjustment. In addition, the Board reappointed Perry White and Saundra Futrell to additional three-year terms on the Personnel Grievance Panel.

14. Town Manager Ogburn - Sanitation and Recycling – Board members agreed with Town Manager Ogburn to take no action at this time on the trash cart rollback ordinance allowing him to continue working with neighborhood associations on this issue.

15. Town Manager Ogburn – Sand fencing/sprigging - Town Manager Ogburn was authorized to do a test pilot project on the beach with hay bales in addition to the sand fencing/sprigging. The Board adopted Budget Amendment #8 to the Beach Nourishment Capital Project Ordinance as presented.

16. Town Manager Ogburn – Speed limit on NC 1243 in S Nags Head (Old Oregon Inlet Road) - the Board passed a motion to authorize staff to request that NCDOT reduce the speed limit on NC 1243 from Juncos Street south to the town line from 45 MPH to 35 MPH.

17. Town Manager Ogburn – Town Manager Ogburn announced that on Monday, March 30th at 2:30 pm at the Dare County offices, a meeting will be held with the County, municipalities, restaurant associations and DENR to see what future recycling options may be available.

18. Mayor Cahoon pointed out the following upcoming Town information sessions/events:
- Multi-use path construction meeting – Thursday, March 5th from 5:30 to 7 pm – Board Room

- Flood Map & Flood Map Prevention Ordinance – Monday, March 9th - 5:30 to 6:30 pm – Board Room
- Town Safety Week – March 9th to 13th
- Green Drinks and Stormwater Updates – Wednesday, March 11th at 7:30 pm at Waveriders Restaurant
- Sunshine Week – March 15th to 21st
- St. Patrick's Parade – Sunday, March 15th
- CIP Workshop – Wednesday, March 25th at 9 am – Board Room
- Community Clean Up starting at Dowdy Park – Saturday, March 28th at 8 am

19. Comr. Brinkley – Comr. Brinkley thanked Donny King of Better Beaches OBX and Ellen Heatwole for speaking today concerning the organization and in support of additional beach sand fencing.

20. Comr. Brinkley – Comr. Brinkley confirmed with Attorney Leidy that the Town does not have the option to sue Bay Disposal re: incinerating recycling materials rather than true recycling per the contract. Attorney Leidy said that suing does not apply to that particular provision of the contract – and would also be counter-productive since the Town is still utilizing the company.

21. Mayor Cahoon – Workforce Housing - A meeting is being scheduled with local mayors for Thursday, March 12th to discuss J1 International workers and housing issues. Details are being finalized. A speaker is coming from Wisconsin where a program was developed to solve their seasonal housing problem. Possibly a model can be utilized for this area. Town Clerk Carolyn Morris is to send details of the meeting to Board members when received.

22. Mayor Cahoon - Future Town Vision (from Jan 2020 Board Retreat) – He presented his ideas for a future vision of the Town; He encouraged Board members to bring forward their ideas to add to the list.

23. Closed Session – The Board entered Closed Session to discuss the Town Manager's review and to discuss and preserve attorney/client privilege at 11:40 a.m.

24. Open Session - The Board re-entered Open Session at 1:08 p.m.

25. Adjournment - Mayor Cahoon recessed the Board meeting to Wednesday, March 11th at 9 am in the Board Room. The time was 1:10 p.m.

MEMORANDUM
Town of Nags Head
Planning & Development Department

To: Planning Board

From: Kelly Wyatt, Deputy Planning Director

Michael Zehner, Director of Planning and Development

Date: March 13, 2020

Subject: Discussion of Large Occupancy Homes

Following discussion with the Planning Board at their January 2020 meeting, and guidance from the Board of Commissioners at their February 2020 meeting, Planning Staff has initiated review of the concerns expressed with large occupancy homes. Both the Planning Board and the Board of Commissioners recommended staff review the Town's standards in relation to the proposed amendments being considered by the Town of Kill Devil Hills.

Town of Kill Devil Hills planning staff was given direction to draft amendments to address safety issues and options to incentivize fire suppression systems for large single-family dwelling units. At their March 9, 2020 meeting Kill Devil Hills staff presented an amendment which would increase side yard setbacks for single-family/duplex dwellings greater than 6,000 square feet in area by two feet in order to provide adjacent properties and the overall community a greater safeguard from the spread of fires. Such dwellings could be exempt from this requirement, providing a fire suppression system is reviewed, approved, installed and inspected annually by the Fire Marshal. It is noted that this installation of a fire suppression system provides safeguards for the persons occupying the dwelling in addition to the adjacent properties, and overall community.

Side yard setbacks in the low- and high-density residential zoning districts within the Town of Kill Devil Hills are determined by the overall lot area. These requirements are outlined below:
Lots 5,000 sf or less = 6 ft. side yard setback
Lots greater than 5,000 sf but less than 7,500 sf = 8 ft. side yard setback
Lots greater than 7,500 square feet = 10 ft. side yard setback

Side yard setbacks in the Ocean Impact Residential zoning district within the Town of Kill Devil Hills is determined by lot width. These requirements are outlined below:
Lots less than 75 ft. in width = 10 ft. side yard setback
Lots greater than 75 ft in width = 12 ft side yard setback

It is important to note that the increased 2-foot setback applies to homes that are greater than 6,000 square feet in area. Within the Town of Nags Head no home can exceed 3,500 square feet of habitable space if on a lot less than 16,000 square feet in area. On lots greater than 16,000 square feet in area, a dwelling cannot exceed 5,000 square feet. Note, Nags Head has more stringent regulations on total allowable house

size than the Town of Kill Devil Hills. At this time under no circumstance would a 6,000 square foot home be constructed within the Town of Nags Head. Regardless, the minimum allowable side yard setback in the Town of Nags Head would either be 8', 10', 12' or 15' depending on the zoning district.

Additionally, the Town of Kill Devil Hills Commissioners considered and recommended proceeding with drafting an ordinance that would amend Off-street Parking and Loading Requirements as it pertain to emergency vehicle access. This amendment would pertain only to dwellings with eleven (11) or more required parking spaces and would incentivize these dwellings to provide a 10-foot wide marked and unobstructed drive aisle up to within 20 feet of the front entrance of the dwelling by reducing the side yard setback for the driveway from 7 feet to 5 feet.

There are several items to note with regard to the Off-street Parking and Loading Requirements within the Town of Nags Head (Article 10, Part II attached).

- With habitable area of a dwelling capped at 5,000 square feet, while we cannot regulate the number of bedrooms, we see between 8 and 9 bedrooms being approved by the Dare County Health Department in the large residential dwellings. With a parking standard for single-family and duplex dwellings of the number of bedrooms minus 2, it is very unlikely there will be a parking scenario within the Town necessitating eleven (11) required parking spaces.
- Residential driveways shall be a minimum of 12-feet in width within the Town of Nags Head. The minimum 12-foot width must extend to the front plane of the house and no stacking of vehicles is permitted in this 12-foot drive aisle. Thus, only one 10 x 18 parking space can be provided in the main drive aisle.

In review of the Town of Nags Head's current requirements in contrast to the proposed amendments by the Town of Kill Devil Hills to address Large Occupancy Homes, it appears that Nags Head's requirements are already significantly more restrictive with respect to the size of homes and setbacks, and address emergency vehicle access to the front plane of the dwelling as presently written.

Staff will be available to continue discussion and answer any questions.

PART II. OFF-STREET PARKING AND LOADING REQUIREMENTS

SECTION 10.11 PURPOSE AND INTENT.

The purpose of this section is to proactively protect, maintain and enhance the public health, safety, environment, and general welfare by establishing requirements to provide the appropriate amount and location of off-street parking and off-street loading which will:

10.11.1. Maintain and increase the level of service of the Town's streets and ability of the Town's street system to safely move traffic;

10.11.2. Facilitate safe access to and from streets;

10.11.3. Avoid conflicts between motorized and non-motorized vehicles and pedestrians;

10.11.4. Maintain and protect the visual attractiveness and community character of the Town;

10.11.5. Promote low-impact development which emphasizes stormwater management, the use of vegetative buffering and landscapes, and the preservation of open space;

10.11.6. Maximize the re-use of existing parking areas; and

10.11.7. Promote re-use of existing commercial sites by allowing for redevelopment to use existing parking configurations in appropriate circumstances.

SECTION 10.12 PARKING LOT REQUIREMENTS FOR SINGLE-FAMILY AND TWO-FAMILY (DUPLEX) DWELLING UNITS.

Permanent off-street parking spaces shall be provided in accordance with the following requirements prior to the completion of construction of any building or structure, or at the time any principal building or structure is enlarged or increased in capacity by adding dwelling units or before conversion from one zoning use or occupancy to another:

10.12.1. Reserved for the Use Intended.
Required off-street parking spaces and loading spaces are permanent areas and shall not be used for any other above ground purpose.

10.12.2. Safety on Busy Streets.
A turnaround area having sufficient maneuvering space, not less than ten (10) feet × ten (10) feet, shall be provided between the designated parking spaces and a minimum of five (5) feet from the right-of-way, so that no vehicle will be required to back into the public right-of-way. Homes which do not front on NC 12, US 158, SR 1243, and oceanfront homes that have lost access due to erosion, shall be exempt from this requirement (see also Section 8.7, Reduction in Development Standards for Erosion Threatened Structures).

10.12.3. Surface Materials Appropriate for Use.

10.12.3.1. Required parking spaces shall be graded and paved with asphalt, concrete, gravel, or other surface material designed to support the intended vehicular loading and in accordance with manufacturer's recommended specifications or other acceptable methods for design of pavement structures. This provision shall not apply in situations where a CAMA permit cannot be obtained for these surface materials.

10.12.3.2. As an alternative to the approved parking space surfaces stated above, an applicant may improve up to twenty (20) percent of the required spaces with reinforced turf pavement. The use of reinforced turf pavements shall be designed to support the intended vehicular loading and in accordance with manufacturer's recommended specifications or other acceptable methods for design of pavement structures. Turf reinforced pavements shall be considered an innovative permeable pavement surface and may be reviewed by the Town Engineer and the fire official having jurisdiction for suitability and shall count as lot coverage in the same manner as other similar permeable pavement surfaces. Turf reinforced pavements shall be installed and maintained in accordance with manufacturers recommended specifications and NCDEQ BMP manual, latest edition. If the turf reinforced pavement is not being maintained in accordance with the provision above, the owner may be required to re-surface the parking in accordance with subsection 10.12.3.1.

10.12.4. Number of Parking Spaces Required.

Parking spaces shall be based on the following formula: N-2, with N representing the number of bedrooms authorized by the septic improvement permit issued by the Dare County Health Department or the appropriate permitting agency. The minimum number of parking spaces shall be two (2).

10.12.5. Additional Bedrooms.

Prior to issuance of a certificate of completion for the construction of any additional bedroom or bedrooms to an existing single-family or two-family dwelling, all required parking spaces shall be installed.

10.12.6. Dimensional Requirements.

All residential parking area dimensions shall, at a minimum, conform to the dimensional requirements shown in the table below:

TABLE 10-1: RESIDENTIAL PARKING AREA DIMENSIONS

Residential Dimension	Single Side Parking	Double Side Parking
Aisle width (W)	12.0	12.0
Curb-to-curb width (X)	30.0	48.0
Curb-to-aisle width (Y)	18.0	18.0
Minimum stall width (Z)	10.0	10.0
Parallel parking	10' width by 20' length	
*Figures A and B illustrate parking and drive aisle dimensional requirements, setbacks, and acceptable stacking configurations.		

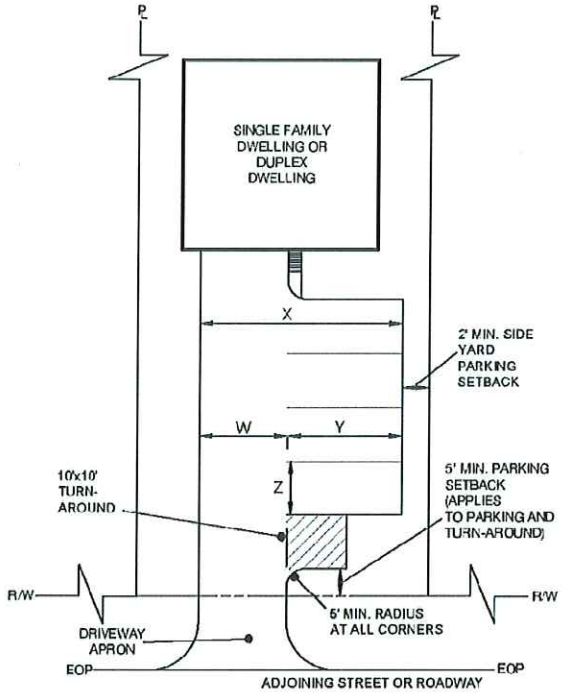


Figure A

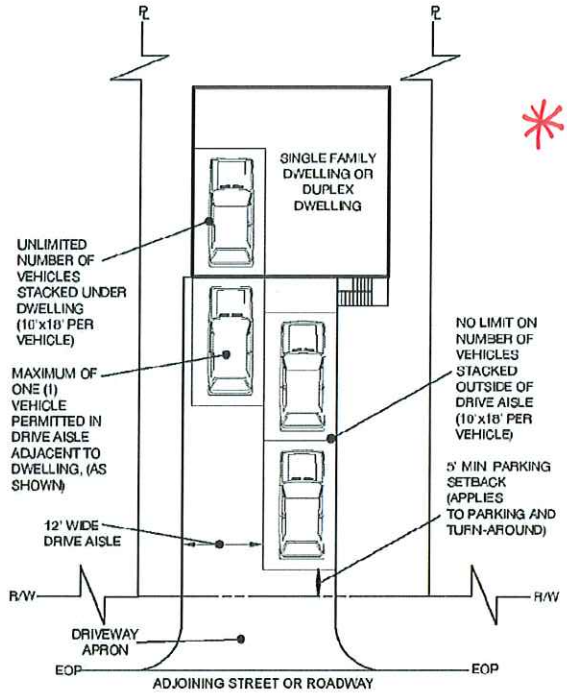


Figure B

10.12.7. Drive Aisle Width and Stacking Requirements.

Drive aisles shall be a minimum twelve (12) feet in width and shall be improved up to the front plane of the dwelling. One (1) parking space may be located at the end of the drive aisle closest to the dwelling. Other stacking of vehicles in the drive aisle is prohibited. Stacking of vehicles under the dwelling or outside of the required 12-foot driveway is unlimited. All parking areas shall be located to allow clear use of a designated turn-around area.

10.12.8. Setbacks for Parking and Drive Aisles.

10.12.8.1. All parking spaces, turn-around areas, and drive aisles shall be located no closer than two feet from any adjacent property line except where drive aisles and driveways are shared between adjacent properties.

10.12.8.2. Parking spaces, turn-around areas, and drive aisles shall be set back from the adjacent right-of-way a minimum of five (5) feet, not including the driveway and driveway apron which connects the parking areas and drive aisle to the roadway pavement.

SECTION 10.13 PARKING REQUIREMENTS FOR ALL USES OTHER THAN SINGLE-FAMILY AND TWO-FAMILY (DUPLEX) DWELLING UNITS.

10.13.1. Permanent off-street parking spaces shall be provided in accordance with the minimum parking requirements contained in this section prior to the completion of construction of any building or structure, or at the time any principal building or structure is enlarged or increased in capacity by adding dwelling units, hotel units, seats or gross floor area, or before conversion from one zoning use or occupancy to another.

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**; updated March 13, 2020**

Subject: Discussion of Legacy Establishments/Structures

Updated content in **bold underline, deleted material in ~~strikethrough~~**

OVERVIEW

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

This item was initially discussed at the Planning Board's meeting on February 18, 2020, with the Planning Board wishing to consider and discuss options further. Staff has expanded on options for consideration by the Board under the Issues and Options section of this memo.

POLICY CONSIDERATIONS

- One of the Town's principal goals, as established in the Comprehensive Plan, is to "Plan for orderly and sustainable growth and redevelopment," and an identified objective to attain this goal is the "Preservation and maintenance of legacy commercial businesses.

- As used in the Comprehensive Plan, at least within the context of *Character Areas*, legacy establishments, structures, or locations are those which "contribute to the overall sense of place or tell the story of Nags Head's past. These establishments, structures, or locations often remind you of the past and are nostalgic."

- Legacy establishments are particularly noted as adding to the character of the Whalebone Junction Character Area, and specifically the Whalebone Junction Core, where it is noted that "flexibility should be given to legacy type establishments for renovations as a way to retain the character of area while allowing the establishment to remain viable in the market."

- Legacy businesses are also referenced with respect to the Corridors Character Area, and specifically for the NC 12 and SR 1243 corridors, where it is noted that one of the future desires is to "provide flexibility for existing legacy businesses to renovate to help keep the character of Beach Road."

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

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

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

  > *EC-7 Recognize the role and importance of the look and feel of legacy development in creating the distinctive heritage, unique lifestyle, and family beach character that is central to the town's vision.*
  >
  > > *EC-7a: Develop more specific criteria for legacy businesses, based on research and data of existing legacy type buildings.*
  > >
  > > *EC-7b: Inventory, research, and map businesses that fit within the legacy business criteria.*
  > >
  > > *EC-7c: Develop incentives to encourage the preservation of commercial floor space.*
  > >
  > > *EC-7d: Explore ways to aid in the development of cottage courts.*

ISSUES AND OPTIONS

Generally, as referenced above, many legacy establishments and structures have been rendered nonconforming, either with respect to the use no longer being allowed in the zoning district in which the property is located or because of standards or requirements changing, or due to both circumstances. Nonconforming status is, by its nature, limiting; Staff would recommend that the Board review Article 5, *Nonconformities*, of the UDO https://www.nagsheadnc.gov/DocumentCenter/View/2771/Article-5_Nonconformities, and specifically Sections 5.3, *Nonconforming Structure with Conforming Use*, 5.4, *Nonconforming Site and Parking Areas*, 5.5, *Nonconforming Use of Land*, and 5.6,

Nonconforming Use of 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~~ **As previously noted, regardless of the approach** it will be necessary to define and develop specific criteria as to what constitutes a legacy business or structure, and to then inventory and map properties that meet those definitions and criteria; however, Staff also believes that it is important to be proactive and take an iterative approach, developing a framework wherein applicable properties and uses can be added over time, as warranted.

At least as part of the development of the Comprehensive Plan, the Plan's Advisory Committee identified the following characteristics of legacy establishments and structures, acknowledging that further defining of characteristics would be warranted:

- **Small businesses which contribute to the sense of place, quality of life, and high-quality visitor experience within the town.**
- **Businesses which are nostalgic or a reminder of the past, conveying the sense that that life here was different, and helped to tell the story of Nags Head's past.**
- **The architecture is varied but the overall size and scale of the building is small and blends within the surrounding neighborhood.**
- **The building is low scale often with only one or 1 ½ stories.**
- **Multiple small buildings may be located on the same property with a mix of residential and business uses. However, the Structures appear residential.**
- **The buildings are set in close proximity to the road.**
- **Parking is directly adjacent to the building or wraps the building.**
- **Restaurants often have walk up windows with outdoor seating.**
- **The area is highly walkable, and businesses often have amenities such as outdoor seating and bike racks that cater to pedestrians and cyclists.**
- **Structures with legacy characteristics were typically constructed prior to 1980.**
- **Dining and retail establishments with legacy characteristics in Nags Head range on average between 3,000-5,000 square feet in size.**

Under either approach, the first qualifying condition should be that the use or structure would be considered nonconforming.

With regard to the use-based approach (i.e. similar to the treatment of nonconforming cottage courts), regulations could be developed for the treatment of specific nonconforming uses (i.e. retail, restaurants, hotels) and structures, or a use category for Legacy Establishments could be created, where the definition could limit application to only certain nonconforming uses and structures. However, it would likely be necessary to further define the standards by which a preexisting nonconforming use would qualify as a Legacy Establishment; for example, assumedly it would not be preferred for all nonconforming restaurants to be able to be considered as Legacy Establishments, but perhaps only those that did not exceed 5,000 square feet in size and exist in buildings that were constructed prior to 1980. Under this option, the Legacy Establishment use could require a Conditional Use Permit, where a use meeting the definition and standards could then seek a Conditional Use Permit and be afforded certain development and redevelopment flexibility not associated with the nonconforming status.

With regard to the overlay zoning district approach, there would not be a need to define a Legacy Establishment use, rather, in concept, a rezoning of property on which there is a legacy business or structure could be sought whereby applicable uses or dimensional conditions would be more flexible than the underlying zoning. Under this approach the qualifying standards could be less rigid, but included in the purpose and intent of the overlay district so that legislative discretion could be applied when a rezoning request were sought. Using the same restaurant example from above, perhaps the purpose of the district is to preserve businesses that are nostalgic or a reminder of the past, generally typified as having no more than 5,000 square feet in area and being located in buildings constructed before 1980; since these are not absolute standards, but guidance for legislative action, a restaurant that had 6,000 square feet in area and in a building constructed in 1985, but still determined to be nostalgic or a reminder of the past, could hypothetically be successfully rezoned. Of course, absolute standards could also be imposed defining the circumstances in which the zoning district could not be applied to a property. Under this option it may be necessary to consider whether Conditional Zoning were necessary, to allow greater flexibility for uses and dimensional circumstances, but to limit the use of the property as specifically proposed.

STAFF RECOMMENDATION

~~At least for this initial discussion,~~ Staff would **continue to** suggest that it would be helpful for the Board to discuss perspectives with regard to what does and does not constitute a legacy business or structure, what are the defining characteristics, and what businesses or structures typify the term. **However, Staff would also suggest that the Board discuss the merits of the two options. Generally, Staff is of the opinion that an overlay district approach provides the necessary flexibility, affords discretion, and limits unintended consequences.**

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

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.

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
Kate Jones, Engineering Technician

Date: February 14, 2020**; updated March 13, 2020**

Subject: Discussion of Residential Stormwater Regulations

Updated content in **bold underline, deleted material in ~~strikethrough~~**

OVERVIEW

Given the continued importance and focus on stormwater, the Board of Commissioners asked the Director of Planning & Development to attend their retreat on January 23, 2020 to discuss the Town's residential stormwater regulations; these regulations can be found in Article 11, *Environmental Regulations* (https://www.nagsheadnc.gov/DocumentCenter/View/2777/Article-11_Environmental-Regulations) of the UDO, within Part I, *Stormwater, Fill, and Runoff Management*, Section 11.5, *General Standards for Residential or Duplex Development on Individual Lots*. A copy of the PowerPoint presentation (without referenced attachments) is attached. Following the Board of Commissioners' discussion, the Board directed Staff to present the Board's perspectives and the options identified by Staff (provided under CONSIDERATIONS) to the Planning Board for review and consideration of any recommended actions,

Essentially, the regulations and ordinance requirements are triggered by the following development activities:

- The construction of new detached single-family and duplex residential properties;
- The construction of more than 500 sq. ft. of new built-upon area on properties with existing single-family and duplex residential dwellings; and
- The removal and replacement of driveways; in instances where an existing driveway and parking area not meeting the standards of this section is being removed and replaced, the new driveway and/or parking area shall be designed so as to limit the discharge of stormwater into the right-of-way or onto adjacent properties.

When triggered, a stormwater management plan meeting the standards required by the ordinance must be submitted. In general, the standards of the ordinance require stormwater control measures (SCMs) to be provided, with storage volume equal to 15 cubic feet for every 100 square feet of built-upon area. For example, 1,000 square feet of built-upon area would require SCMs with 150 cubic feet of storage volume. The

regulations do provide options to reduce the calculated built-upon area, incentivizing preferred outcomes, and thereby reducing the necessary sizing (storage volume) of SCMs.

The Board discussed this item at their meeting on February 18, 2020, however, only brief questions and perspectives were considered, with the Board committing to discussing further at their March meeting.

CONSIDERATIONS

During their discussion at the retreat, the Board of Commissions noted the following guiding principles for further review and consideration of the residential stormwater regulations:

- Can our rules acknowledge that there are different conditions – a system with flexibility?
- Retain form of landscape/minimize impact to landscape.
- Look for common sense solutions.
- Don't place unjust burden on property owner.
- Can we offer a "carrot" to go with a stick?
- Do we as a Board need to define flooding – separate between "Nuisance" and "Problem Stormwater" issues.
- Should not create additional problems.
- Should define problem we are trying to solve.

In their consideration and any recommendation to the Board of Commissioners, Staff would suggest that the Planning Board focus on whether the regulations and any potential changes address these perspectives and principles.

In their review, the Board of Commissioners also asked that the Planning Board consider the following options identified by Staff, to determine whether related actions may be necessary so that the regulations are more consistent with the aforementioned principles. The options presented by Staff to the Commissioners are in bold, Staff has expanded on each of these items for consideration and discussion by the Planning Board.

- **Improve education and availability of resources**
    - Education:
        - In the near term, publish social media and website news flashes related to the benefits of stormwater management at the lot level.
        - Publish a brochure, similar to materials for the Septic Health Initiative, can be mailed out to homeowners focusing on the benefits of stormwater management.
        - Engage with stakeholders and focused groups (Green Drinks, contractors, homeowners) on Town stormwater efforts, stormwater management, and Low-Impact Development (LID) techniques.

        - Coordinate with CSI, North Carolina Coastal Federation, and others to share resources and increase capacity.

    - LID Pilot Project: Look for opportunities on Town property to install pilot projects highlighting LID stormwater control measures; incorporate signage and coordinate public education opportunities.

    - Availability of Resources:

        - Is there a way to cost share or subsidize costs of required improvements? This would require a budget allocation or grants.
        - There are existing grants that could be used, such as the Dare Soil and Water grant, which can provide $5,000 per homeowner, but there is a cap on total funding.
        - Could the stormwater ad valorem tax be expanded to include residential stormwater management funding?
        - Consider a water bill credit for installing LID stormwater measures such as cisterns and rain barrels.

- **Enhance ordinance incentives for preferred outcomes**

    - Expand available credits to reduce built upon area.
    - Do not cap tree and open space preservation credits to a maximum of 30% reduction of built upon area; provide the option to eliminate the need for stormwater management if you have enough open space and sizable trees to retain.
    - Provide a credit for reducing site disturbance, lot clearing, or filling.
    - Offer additional credit for not filling Army Corp of Engineers wetland areas.
    - Offer an incentive for the use of native plants in the SCMs.
    - Reduce the number of required SCMs (from 3 to 2) for a built upon area credit.

- **Provide an administrative option for engineering analysis to exempt or reduce requirements**

    - This may be an option, but conditions or standards allowing for exemption would need to be identified.

    - Consideration for water quality impacts, need to be considered, not just water quantity.

- **Provide more alternatives**

    - The regulations provide a variety of options and currently allow for the approval of alternative SCMs; we should continue to defer to the State for accepted SCMs, but continue to explore new technologies.

- **Provide for administrative waiver/variance**

  - Will require conditions and circumstances that warrant waiver to be identified. Would these be soil conditions, topography, lot size, amount of disturbance?
  - Who would make this decision and what information is required to be submitted?

- **Standardize dimensions and volume of BMP's**

  - Perhaps a standard set would relate to lot size, and the lot coverage allowed by zoning.

  - May result in more predictability, but less relation to actual impacts and existing conditions.

- **Create a points-type program for BMP's and/or preferred outcomes, similar to design guidelines**

  - Needs further thought, but could be designed such that points are received for various LID components. This would open up predevelopment LID concepts for points such as siting development in lower impact portions of the site, choosing greater setbacks and smaller building footprint, retaining natural hydrological features (i.e. wetlands).

  - SCMs with greater impacts would receive more points. The BUA would determine the amount of points needed; for example, SCMs with native plants would receive more points than infiltration trenches and French drains, large cisterns would receive more points than standard rain barrels, etc.

  - Signing a maintenance agreement could also generate points.

  - May be an *overcorrection*, significantly revising a regulatory program that has been in place for only 14 months.

STAFF RECOMMENDATION

Staff recommends that the Planning Board discuss the residential stormwater regulations, identifying their own perspectives regarding the intent of the regulations and whether the regulations achieve their intended purpose, align with the Commissioners' principles, and/or require adjustment. **Generally, Staff believes that positive results would be generated by pursuing options identified above to *improve education and availability of resources* and to *enhance ordinance incentives for preferred outcomes*.**

Attachments:

1. PowerPoint - Town of Nags Head Residential Stormwater Ordinance Discussion, Board of Commissioners Retreat, January 23, 2020

Town of Nags Head Residential Stormwater Ordinance Discussion

Board of Commissioners Retreat

January 23, 2020

Residential Stormwater Ordinance - Background

- The regulation of stormwater on residential lots became a consideration in the Fall of 2012, the result of excessive rainfall and flooding that occurred over the preceding late-Spring and Summer months.
- On January 8, 2014, the BoC adopted an update to Chapter 34, *Stormwater, Fill and Runoff Management*, of the Town Code (*Attachment A*) which codified a stormwater plan requirement for single-family and duplex development triggered by fill and/or grading activities; adoption of this ordinance was preceded by the work of a stormwater subcommittee and coordination with the Planning Board and BoC (*Attachment B and Attachment C*)
- Between 2014 and the end of 2018, there was continued discussion and consideration of stormwater and the Residential Stormwater Ordinance; on December 5, 2018, the BoC adopted amendments to Chapter 34 (*Attachment D*) intended to simplify the requirements and plan approval process (*Attachment E*).
- Within 2019, Staff continued to work with representative of the Outer Banks Home Builders on fill requirements (*Attachment F*); Staff committed to proposing amendments to fill requirements in conjunction with adoption of an updated Flood Prevention Ordinance. Chapter 34 was codified as Part I of Article 11, Environmental Regulations, of the UDO (*Attachment G*); the complimentary Recommended Standard Details Manual may be accessed here: https://www.nagsheadnc.gov/938/Recommended-Standard-Details-Manual--Sto

Residential Stormwater Ordinance - Purpose & Intent; Policy Goals

- As provided in the UDO, the purpose and intent of the overall *Stormwater, Fill and Runoff Management* Ordinance is to proactively protect, maintain and enhance the public health, safety, environment and general welfare by establishing requirements and procedures to control the adverse effects of fill, land disturbance and increased post-development stormwater runoff for the purposes of both water quantity management for flood prevention and water quality protection with the goals to:
  - Control and minimize impacts associated with stormwater runoff from all development and redevelopment.
  - Mitigate current stormwater problems and prevent future problems associated with stormwater runoff.
  - Preserve water quality through proactive management practices.
  - Facilitate public understanding of stormwater management.
  - Encourage the use of pilings and open foundations and minimize the use of fill, consistent with FEMA's coastal construction recommendations.
  - Improve stormwater management through use of low impact development techniques.
  - Establish requirements for on-going management and maintenance of stormwater management practices.
  - Establish application and enforcement procedures that address land disturbance, sedimentation and erosion control, the use of fill, and stormwater management practices consistent with associated Town ordinances and state and federal laws and regulations, to include:
    - Soil erosion and sedimentation control provisions (Article 11, Part II);
    - Excavations (Chapter 18 of the Town Code of Ordinances);
    - Flood damage prevention provisions (Article 11, Part III);
    - NCDEQ stormwater management (NCAC T15: 02H .1000);
    - NCDEQ soil erosion and sedimentation control (G.S. 113A-50 - 113A-71);
    - NCDEQ and Dare County Health Department subsurface, ground-absorption wastewater effluent disposal (NCAC T15A: 18A. 1900).
  - Establish public awareness of potential surface and subsurface water drainage problems recognizing that development potential of some land may be limited.
  - Regulate development and redevelopment which may create additional stormwater related burdens to the Town or adjacent properties.
  - Cause every development and redevelopment employing stormwater management practices to develop a maintenance plan, and place responsibility for maintenance with the property owners.

Residential Stormwater Ordinance - Purpose & Intent; Policy Goals

- As established in the adoption ordinance for the 2018 Ordinance amendments, the basis for the adoption of the amendments were that:
  - the Town acknowledges that stormwater poses a threat to the public health, safety, and welfare;
  - the Town has experienced significant localized flooding during heavy and/or frequent rain events that in many cases can be attributed to stormwater and;
  - it is the Town's intent to preserve residential neighborhoods and to support local businesses;
  - the Town finds that the improper use of fill and lack of maintenance of stormwater management practices contributes to stormwater run-off;
  - the 2017 Comprehensive Plan states that the Town will "Ensure that stormwater runoff is properly managed to reduce nuisance flooding and pollution of sensitive environmental areas (p. 205)";
  - the Town finds that to protect coastal waters we should limit non-point source pollution attributed to run-off from impervious surfaces such as parking lots and roof tops;
  - the Town finds that as more lots are developed and the built upon area is increased throughout Nags Head, stormwater collection and conveyance systems within the public rights-of-way are being overburdened and must be supplemented with additional management practices on private property;
  - the Town manages resources to protect the public infrastructure, quality of life, environment, and property of the citizens of Nags Head through fair and equitable, cost effective means, and the Stormwater Ordinance seeks to improve, enhance, and protect the quality of life for the citizens of Nags Head;

Residential Stormwater Ordinance - Purpose & Intent; Policy Goals

- The Town's Comprehensive Plan includes the following policies and actions related to stormwater:
  - LU-14b: [Review] Existing lot coverage incentives for providing engineered stormwater management.
  - MS-15: Ensure that stormwater runoff is properly managed to reduce nuisance flooding and pollution of sensitive environmental areas.
  - MS-17b: Seek additional funding opportunities from local, state and federal agencies to assist with future stormwater planning and construction efforts.
  - MS-18: Educate and involve the public in stormwater management.

Residential Stormwater Ordinance - Continued and Additional Considerations

- As noted on Slide 2, since adoption of the amendments in Dec. 2018, Staff continued to work with representative of the Outer Banks Home Builders on fill requirements; Staff committed to proposing amendments to fill requirements in conjunction with adoption of an updated Flood Prevention Ordinance. As noted in *Attachment G*, there was not consensus on all issues between Staff and the Home Builders; Staff did receive feedback from the BoC at their September 2019 Retreat that will inform the forthcoming draft amendments associated with fill and the Flood Prevention Ordinance.
- Since January 2019, there have been 25 stormwater plans submitted for residential projects (6 for pool projects); of those, 3 were prepared by a licensed engineer, compared with 8 of 8 projects active at that time under the previous iteration of the ordinance having been prepared by a licensed engineer (3 of those 8 were subsequently redesigned under the new ordinance).

Residential Stormwater Ordinance - Continued and Additional Considerations

- Options to consider:
  - Repeal the residential stormwater requirements;
  - Improve education and availability of resources;
  - Enhance ordinance incentives for preferred outcomes;
  - Provide an administrative option for engineering analysis to exempt or reduce requirements;
  - Provide more alternatives;
  - Provide for administrative waiver/variance;
  - Standardize dimensions and volume of BMP's;
  - Create a points-type program for BMP's and/or preferred outcomes, similar to design guidelines;
  - Other options?