



MEMORANDUM

Town of Nags Head

Planning & Development Department

To: Board of Commissioners

From: Joe Costello, Deputy Planning Director
Conner Twiddy, Environmental Planner
Kelly Wyatt, Planning Director

Date: May 28, 2024

Subject: Consideration of text amendments to the Unified Development Ordinance (UDO) to prohibit parking on septic systems.

Included for the Board of Commissioners consideration is a text amendment to the Unified Development Ordinance which, if adopted, would expressly prohibit parking on designated septic area for residential properties within the Town. This ordinance amendment was generated following discussions with the Septic Health Advisory Committee (SHAC) and has been revised to minimize unnecessary impacts on property owners who would not/do not have issues with parking on their septic systems. Instead, it provides a mechanism of enforcement for those properties who are identified to be in violation of this ordinance. Should staff become aware of any violations either through complaints received or proactive monitoring by town staff, a Notice of Violation will be issued to the property as required in Section 1.10, Violation of UDO Regulations. If applicable, this notice will also be provided to the rental agency managing the property. This Notice of Violation will outline the required remedy, including the installation of a physical barrier to prevent any future violations of the ordinance.

During the evaluation and issuance of permits for residential development with potential for excessive or overflow parking, staff will recommend installation of a physical barrier from the outset.

The Planning Department will prioritize outreach and education on the importance of protecting and maintaining septic systems. If the ordinance is adopted, we will make notable efforts to inform property owners, contractors, rental management companies, and other relevant parties and organizations about this new ordinance prior to issuing any Notice of Violation.

The staff reports from the Planning Boards February 20th and April 16th meetings are included below for the Board of Commissioners review.

POLICY CONSIDERATIONS

The 2017 Comprehensive Land Use Plan provides the following policies and actions which should guide the Town's zoning and development actions:

- LU-1 – Ensure that the character of Nags Head is preserved as a single-family residential beach community with ties to its natural environment. This character is defined by: Development of low density and intensity served primarily with on-site wastewater systems.
- LU-12 – Utilize on-site wastewater systems as the preferred method of wastewater treatment as long as they remain viable to effectively treat effluent and protect water quality.

- NR-16 – Minimize impacts of future sea level rise. NR-16e – Maintain and expand the Septic Health Initiative by providing government assistance for septic retrofits, assisting homeowners in maintaining their septic systems, conducting more groundwater sampling, securing wells for sampling, developing partnerships to assist with the peer review of existing data, transition to a mandatory septic inspection program with incentives and mapping of groundwater.
- NR-24 – Preserve, protect, and improve water quality and natural estuarine functions to ensure public health, protection of natural resources and habitats, and recreational use.
- NR-25 – Increase public understanding of the relationship between water quality, ecosystem health, and human health advisories relating to water quality.

PLANNING BOARD RECOMMENDATION

At their April 16, 2024, meeting the Planning Board voted unanimously to recommend adoption of the proposed text amendment as presented.

If the Board of Commissioners is inclined to adopt this proposed text amendment, please reference Appendix A for the Statement of Consistency with the Town's adopted Comprehensive Land Use Plan requirements (attached).

Staff Report for Planning Board's April 16th, 2024 Meeting (as reference)

At their meeting on February 20, 2024, the Planning Board reviewed and recommended the adoption of a proposed amendment to the Unified Development Ordinance (UDO) that would stipulate when a physical barrier must be installed to prohibit driving over and parking on residential septic system areas. However, both staff and the Planning Board recognized that the original proposal might have imposed unnecessary burdens on many property owners who would not/do not have issues with parking on their septic areas. In light of this, staff has now developed a revised amendment that aligns with the septic protection goals discussed by the Septic Health Advisory Committee (SHAC), while only mandating physical barriers for properties if found to be in violation of the ordinance.

The revised amendment expressly prohibits parking on designated septic system areas. Should staff become aware of any violations, either through complaints or proactive monitoring by town staff, a Notice of Violation will be issued to the property owner and, if applicable, provided to the rental agency managing the property. This notice will require the installation of a physical barrier to prevent future infractions.

This approach ensures that the enforcement of septic system protection is tied to a formal violation of the UDO, with a clear remedy outlined.

Additionally, when evaluating and issuing permits for residential development where there is a potential for excessive or overflow parking, staff will recommend installation of a physical barrier at the outset.

Outreach and education on the importance of protecting and maintaining septic systems will continue to be a priority of the Planning Department.

Planning staff will be available at the Planning Board's April 16, 2024, meeting for further discussion.

Staff Report from February 20, 2024 Planning Board Meeting (as reference).

At their October 24, 2023, meeting the Septic Health Advisory Committee (SHAC) discussed the importance of prohibiting, or at a minimum discouraging, driving over and/or parking on top of active septic and drain field areas on residential properties. While providing the Planning Board with an update on the Septic Health Committee at their November 2023 regularly scheduled meeting, it was the consensus of the Planning Board to initiate the text amendment process for this item.

Currently, vacationers and property owners alike may be unaware that their property has a septic system. Many others are unsure what is required to properly maintain their septic systems. Parking or driving on septic systems can compromise the proper function of a septic system by rupturing pipes, cracking the tank, or compacting or damaging soil, depending on the soil type. Damage to septic systems can lead to costly repairs and environmental hazards to include the potential pollution of water sources and the proliferation of bacteria which can be dangerous to human and wildlife health.

As part of a discussion on the impacts of over-occupancy, the Septic Health Advisory Committee recommended that the Town consider requiring a physical barrier to prevent driving over and/or parking on the septic system area.

Staff has defined this area as the area containing the septic tank, disposal field/drain field and other components of a working septic system as approved on a recorded plat or an approved, stamped site plan by the Dare County Environmental Health Department. Property owners will

have different options on how to achieve this result to include placement of post and rope, landscaping, planters, raised landscape beds and fencing. Other landscaping, barrier and deterrence measures and solutions may be used if determined to be acceptable by the Unified Development Ordinance (UDO) Administrator.

Outreach and education will be necessary to provide property owners, design professionals, and contractors with information on what methods are acceptable to prevent driving over and/or parking on septic system areas.

Continued implementation of the Decentralized Wastewater Management Plan (DWMP) and development of creative strategies to increase awareness and participation in the Septic Health Initiative is an action item in the Towns 2024 Strategic Plan. A town-wide outreach and education campaign will be needed to accomplish this action item. As part of this campaign staff will create various educational initiatives to educate and notify property owners, visitors, homebuilders, and rental companies about all aspects of the Septic Health Initiative including consequences of a damaged septic tank or drain field as well as the acceptable forms of barriers.

If adopted, compliance with this ordinance would be required for any new residential construction and substantial improvement of any existing residential development as it relates to any increase in habitable area, increase in the number of allowable bedrooms, and driveway and parking improvements. In the event of new residential construction and substantial improvement of existing residential structures, a development permit will be required. Compliance with this ordinance will be a condition of final zoning approval in advance of receiving a certificate of occupancy/compliance. If a property owner wishes to provide this barrier outside of a larger scope of work, this will be handled similarly to a fence permit (non-pool barrier) as a no cost permit.

This ordinance applies specifically to residential properties. Commercial properties are required to go through a site plan approval process where there are mechanisms to ensure parking is not to occur on a septic system area.

To enforce this ordinance, staff will first provide an informal warning to those found to be in noncompliance. This will include contacting the property owner and occupant of the home if not the same, as well as the rental company if the home is within a rental program to explain the issue. If continued violations occur at a property, a formal Notice of Violation will then be issued consistent with Section 1.10, Violation of UDO Regulations, of the Unified Development Ordinance.

Note: Planning staff would like to encourage the Planning Board to consider and discuss whether this ordinance should apply to all residential properties within the Town or to a subset of properties. Examples may include the applying this ordinance to residential homes within a rental program only, or to homes adjacent to NC 12 and NC 1243 as these are the areas where overflow parking on septic and drain field areas is primarily observed.

Planning staff will be available at the Planning Board's February 20, 2024, meeting for further discussion.

(DRAFT)

AN ORDINANCE AMENDING THE TOWN CODE AND UNIFIED DEVELOPMENT ORDINANCE OF THE TOWN OF NAGS HEAD, NORTH CAROLINA AS IT PERTAINS TO PROHIBITION OF DRIVING OVER AND/OR PARKING ON SEPTIC AREAS.

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160D-701, 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. 160D-702, 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. § 160D-103, which allows the Town to combine certain land development ordinances into a unified ordinance;

WHEREAS, Section 2.4.4.3 of the Unified Development Ordinance provides that the powers and duties of the Planning Board include developing and recommending policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;

WHEREAS, Section 3.5.1. of the Town Code makes clear that a zoning ordinance text amendment may be initiated by motion of the Board of Commissioners, by motion of the Planning Board, or by application by any person within the zoning jurisdiction of the Town;

WHEREAS, the Septic Health Advisory Committee recommended the Planning Board consider a text amendment to inhibit parking and driving on septic systems as this can cause expensive repairs to the property owner and a health risk to people and wildlife;

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 10.12.9, Parking on Septic Areas Prohibited**, be added as follows:

10.12.9 Driving or parking on the designated septic system areas is expressly prohibited. To resolve violations of this ordinance, the property owner shall be required to install a physical barrier separating vehicular areas from septic system areas in order to limit damage to the system. Acceptable physical barriers may include fencing, posts with rope, raised landscape beds, landscape timbers or other landscaping treatments as approved by the Unified Development Ordinance (UDO) Administrator. Physical barriers must be installed with an adequate setback to prevent damage to the septic system, as determined by the UDO Administrator. This section may be enforced by any one or more remedies authorized by N.C.G.S. 160A-175.

PART II. That **Appendix A – Definitions**, be amended to add the following definitions:

Septic System means a subsurface wastewater system consisting of a settling tank and a subsurface disposal field.

Septic Tank means a watertight receptacle for sewage which, after bacterial action, discharges the effluent.

Disposal Field aka 'drain field' or 'dispersal field' means an area of ground under whose surface the overflow from a septic tank is distributed in drain tile to be absorbed in the soil.

Septic System Area means an area containing the septic tank, disposal field/drain field and other components of a working septic system as approved on a recorded plat or an approved, stamped site plan by the Dare County Environmental Health Department.

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 ____ 2024.

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