



**AGENDA**  
**Town of Nags Head Planning Board**  
**Nags Head Municipal Complex – CONFERENCE ROOM, 2<sup>ND</sup> FLOOR, TOWN HALL.**  
**Tuesday, October 18<sup>th</sup>, 2016; 2:30 pm**

A. **Call To Order**

B. **Approval of Agenda**

C. **Public Comment/Audience Response**

D. **Approval of Minutes** – September 20, 2016

E. **Action Items**

1. Consideration of zoning ordinance text amendments to permit "Cottage Courts" as an allowable use within the Town.
2. Consideration of zoning ordinance text amendment to require any commercial structure within the C-2, General Commercial Zoning District with a ground floor heated area that is 15,000 square feet or greater to obtain site plan approval via the Conditional Use process.

F. **Report on Board of Commissioners Actions**

1. Consideration of a request to amend conditions associated with "Car WashP as a conditional use within the C-2 General Commercial Zoning District – Adopted as presented with Planning Board revisions and additional language stating: "Car washes may have specified hours of operation as necessary to minimize the impacts on any adjacent residential uses".
2. Consideration of text amendments to permit "cottage courts" as an allowable use – tabled discussion for attorney and staff to work on issues related individual cottages having pools, size of accessory structures and on-site management.

G. **Town Updates – as requested**

1. Update on Focus Nags Head – Joint workshop with Planning Board, Board of Commissioners and Advisory Committee scheduled for January 12<sup>th</sup>, 2017 at 9am.
2. Dowdy Park

H. **Discussion Items**

I. **Planning Board Members' Agenda**

J. **Planning Board Chairman's Agenda**

K. **Adjournment**

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**Town of Nags Head  
Planning Board  
September 20, 2016  
-DRAFT -**

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

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

***Members Present***

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

***Members Absent***

Clyde Futrell

***Others Present***

Andy Garman, Kelly Wyatt, Lily Nieberding

***Approval of Agenda***

Ben Reilly moved to approve the agenda as presented. Jim Troutman seconded the motion and it passed by unanimous vote.

***Public Comment/Audience Response***

None

***Approval of Minutes***

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

***Action Items***

*Request by The Outer Banks Hospital to amend the Town Code to establish requirements for the development of buildings for outpatient services as an accessory use to the principal use of "Hospital" within the Village at Nags Head SF-4 Zoning District.*

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

The Outer Banks Hospital approached the Town in early September for a pre-application meeting to discuss the construction of a potential detached structure on the hospital site for the primary purpose of offering outpatient services such as physical therapy. It was during the staff review leading up to

this pre-application meeting where it was noted that the Town Code sets forth a 100 foot setback for hospital buildings adjacent to any residential use. As originally designed by the East Group, this proposed building would be setback approximately 50 feet from a residential use (Old Nags Cove to the North).

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

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

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

Staff would submit that this is a reasonable request given that the setbacks for the original "hospital" use were likely established without consideration for smaller, detached accessory buildings such as this. Staff submits that the proposed use in relation to the hospital use does meet the criteria of an "accessory use" and, as such, a lessening of the setback is appropriate. Stand-alone medical offices are currently allowed as a permitted principal use in the C-2, General Commercial Zoning District, the SED-80 Special Environmental District, and within the Village at Nags Head Commercial-1 District. While the setbacks for a medical office in the SED-80 District are significant due to the environmental sensitivity of the area, medical offices in the C-2, General Commercial District and Village Commercial-1 District are less than the proposed 50 foot setback. Noting that this proposal for a detached medical office operating as an accessory use to a hospital is likely no different than that of a medical office operating in the general commercial district, staff would recommend approval of the proposed zoning ordinance text amendment as presented.

Mr. Reilly inquired if there were any concerns with parking and also questioned height limitations. Ms. Wyatt explained that at some point in time the parking standard for hospitals was reduced. When Staff reviewed the surgical addition, based on the number of beds, there was excess parking on site. The applicants have used the parking standard for medical office and it appears to be compliant. With regards to the height, Ms. Wyatt noted that the height for medical office would be 30 feet or 35 feet with a pitched roof. Any detached structure could not be as tall as the hospital.

Ms. Wyatt also reminded the board that if the request is approved it would come back as a conditional use and would have to meet all architectural requirements.

Ms. Wyatt explained for Chair Cornwell that the 40 ft. setback from US 158 right-of-way was not a new recommendation, it is what currently exists for hospitals.

Applicant Craig Leonard addressed the Board. Chair Cornwell inquired if there was anything being proposed as part of the structure that would create noise out of the ordinary such as a back-up generator or an oversized A/C unit. Mr. Leonard confirmed that the proposed building would be relatively small, similar to a house in size with no emergency generator and just a standard heat pump.

Ms. Murray inquired if there was any extraneous lighting proposed? Mr. Leonard noted that there will actually be a reduction in light spill; what they are proposing is a one-story building with a gabled roof and any site lighting will be less than 12 feet of the ground.

Chairman Cornwell moved to recommend approval of the proposed amendment as submitted. Pogie Worsley seconded the motion and it carried unanimously.

Chair Cornwell asked Mr. Leonard to be thinking of parking and stormwater management as they move forward.

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

In April of this year, Mr. Derek Hatchell on behalf of I.G. Holdings, LLC, submitted a zoning ordinance text amendment application, which, if adopted, would eliminate the need for an attendant to be present on-site during all hours of operation of a car wash. In the zoning text amendment application, the applicant cited the desire to no longer require an attendant be present onsite as it is not necessary given that the car wash would be fully automated.

Following requests made by the Planning Board at its May 17, 2016 meeting, numerous revisions were made to the proposed ordinance to include:

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

Based upon the history of discussion surrounding the previous Board's desires for any car wash to have an attendant on-site during all hours of operation, Planning Staff recommended denial of the proposed text amendment as presented. In addition Staff did not believe that the 50 foot setback adjacent to residential zoning districts or uses was adequate to mitigate noise concerns based on the proposed use.

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

Chair Cornwell noted that at the Board of Commissioners August 3, 2016 meeting the Board held the Public Hearing and, after much discussion with both the applicant and concerned citizens, asked that this item be brought back to the Planning Board for additional discussion/clarification on several items. Chair Cornwell asked that they review them one by one.

**- Setbacks and buffering in consideration of nearby and adjoining residential communities.**

*(Is 50 ft. setback adequate? Is opaque buffering best for public safety purposes, especially along front property boundary? Can fencing be used in conjunction with landscaping to achieve opaqueness?)*

Ms. Wyatt confirmed that they do not have any other 100 ft. setback requirements other than for hospitals. Automobile service stations and repair garages have a 50 ft. setback requirement as do animal clinics with outdoor runs, drive- thru restaurants and skate parks. Shopping centers must have a 75 ft. setback.

John DeLucia, speaking for the applicants, stated that they did not feel that it was any different from a gas station or service station, which has a 50 ft. setback from residential areas. From a land use perspective they would not like to see it go any more than 50 ft. Mr. DeLucia confirmed that none of the people who spoke up at the public hearing had issues with 50 ft. setback. Mr. DeLucia also confirmed that there will be a six foot privacy fence on the side yard in addition to vegetation.

Ms. Murray noted that in hearing the comments made by the residents, even another 10 feet might make a difference.

Mr. Reilly agreed stating that every business creates noise, but the reason for the larger setback in this case is because the business would run 24 hours a day; Mr. Reilly stated that mechanic shops are not open 24/7.

Mr. Worsley disagreed stating that the gas station was there first, before the houses were built. With buffering and a fence there will be no noise or very little; it will be probably be quieter than it is now. Mr. Worsley stated that a 75 ft. setback would be too much and that he was fine with a 50 foot setback.

Mr. DeLucia confirmed for Chair Cornwell that a 75 ft. setback would restrict their ability to put something on that site.

The Board voted 4 to 2 to leave the 50 ft. setback as is, with Ben Reilly and Kate Murray casting the nay votes.

**- Review of the placement of the building(s) on the site.** *(Desire to have the structure built to the minimum front yard setback; eliminate potential to have structure set back on a deep lot?)*

Ms. Wyatt stated that the town does specify the orientation for any building within the code; it is just required to meet the setback. There are no other uses where this is regulated and they have not done this anywhere else.

Mr. DeLucia noted that the Town had already established greater setbacks for commercial properties that back up to residential areas; Mr. DeLucia does not feel that this use should be treated different from any other use that is allowed.

Chair Cornwell stated that it was very difficult to be business friendly and then place a lot of restrictions that can't be met.

The Board voted unanimously in favor of removing the alignment requirement.

- **Review of traffic flow/access only from US 158.** (*Does the Town wish to require access to any such use to be from US 158, not accessed from any side street it may be adjacent to?*)

Mr. DeLucia stated that they did not agree with this point; access from 158 is neither practical nor safe. Mr. DeLucia stated that for years the town has have spoken about access from side streets. Mr. DeLucia is not sure if NC DOT would allow them access from US 158.

Ms. Wyatt confirmed that Town tries to encourage side street access for corner lots to minimize curb cuts on the bypass. Ms. Wyatt also stated that NCDOT might not allow it and it would be up to NCDOT.

Mr. DeLucia confirmed for Chair Cornwell that they would prefer no access from the bypass at all, they would be better off without it. If they must have a driveway to US 158 it would need to be right in and right out – no left turns allowed.

Ms. Wyatt confirmed that removing the access requirement gave the applicant more flexibility. They could have access from Lakeside and US 158 if they received NC DOT approval.

Mr. Troutman was in favor of removing the requirement stating that it would be similar to the intersection where the post office is. You can access the Lutheran Church from Deering Street or a right from 158 but you can only exit to the right.

The Board voted 4 to 2 to remove the access requirement from US 158, with Kate Murray and Ben Reilly casting the Nay votes.

- **Define/re-word "Areas of Vulnerability".** (*The Town does not define what an "area of vulnerability" is and it would be difficult to regulate. Consider having all areas of the site monitored?*)

Staff is proposing that security cameras shall be installed and positioned to provide visibility of the entire site. Chair Cornwell suggested changing the word visibility to video surveillance. Mr. DeLucia agreed and stated he would like to add the words "and operations" after the word "site". The applicant's intent is to have cameras in every bay.

The Board agreed unanimously with these changes.

- **Pros and Cons of operating 24/7 versus 9am to 9pm.**

Staff has recommended hours of operation from 9 am to 9 pm. The applicant would like to keep it 24/7.

Ms. Murray noted that the concerns expressed by the neighboring residents, related to buffering and setbacks, were mostly related to noise in the hours between evening and sunrise. She would personally prefer something like 7 am to 9 pm rather than 24 hours a day. She would even be ok extending it to 10/10:30 pm.

Mr. Reilly agreed with staff's recommendation of 9 am to 9 pm. He would maybe be ok with a little earlier but would not want it open much later than 9 in the evenings as it is quiet time and even bedtime for many folks.

Mr. DeLucia stated that as far as his clients are concerned this needs to be a 24 hour operation for a variety of reasons: security, not having a place where the lights go down and kids hang out, etc. The applicants know that there is a need for car washing during the night, police use it and cab drivers use it for example. Mr. DeLucia stated that other businesses are not limited to operating hours, 7-11, fast food

places; Food Lion stays open 24 hours and this business should be no different. Mr. DeLucia noted that it is not a noisy operation. Mr. DeLucia also noted that there is a noise ordinance and if they exceed the allowable levels the police can come out and enforce those.

Mr. Troutman agreed noting that service stations stay open 24/7 and customers can vacuum cars at all hours.

The Board voted 4-2 in favor of keeping the 24/7 with Ben Reilly and Kate Murray casting the nay votes.

#### **- Review of decibel levels of vacuum cleaners.**

Chair Cornwell asked about the possibility of Staff checking the noise decibel at other sites. Mr. DeLucia stated he would check the noise decibels and have the for the BOC meeting.

#### **-Buffering of site**

Staff added the language "This buffer yard, when adjacent to residential uses and districts, shall be continuous and opaque. Fencing may be incorporated into the buffer to ensure opaqueness when necessary."

Mr. DeLucia confirmed for Chair Cornwell that they were in agreement with this language.

The Board voted unanimously to leave in this language.

Chair Cornwell suggested that in Part I (9)(a) the language related to security cameras should be a separate item.

Based on their discussion, Chairman Cornwell moved to recommend approval of the motion as amended, Pogie Worsley seconded the motion and it passed by unanimous vote.

(The Planning Board chair requested staff to draft the final ordinance moving forward to the Board of Commissioners with the language reflecting the votes that were recorded specific to each ordinance condition).

#### ***Report on Board of Commissioners Actions***

Deputy Planning Director Kelly Wyatt:

Consideration of Preliminary Plat for Elliott Estates, Phase III, Lot 25 with request for subdivision waiver regarding access – the waiver request and preliminary plat were denied with a vote of 4-1. Ms. Wyatt noted that the predominant concerns were loss of commercial property and some drainage issues.

#### ***Town Updates***

##### Focus Nags Head

Holly White updated Board. Advisory Committee met on Sept 9<sup>th</sup> to review the packet, the Planning Board was copied on the packet at that time. The Committee met again on the 16<sup>th</sup> and is scheduled to meet again on the 27<sup>th</sup>. There has been a lot of great discussion and Lily has been taking notes at each meeting which Holly will forward to the Board members.

Ms. Murray agreed noting that they've had a good cross-section of community members. It is a slow process because there is a lot to digest and discuss but she felt they had made good progress. Ms. Murray noted that it will be interesting to see what happens when it gets to the technical committee because that is where the detail will come into play.

Ms. White noted that Staff is working on a schedule with the consultant but they need to have more of the policy in place and get BOC feedback before they move forward with the technical committee. This will probably not happen until after November.

### Dowdy Park

Deputy Town Manager Andy Garman stated that work is continuing on the park. They are making good progress, and are currently about 30 days ahead of schedule according to Town Engineer David Ryan. The area will be ready for the playground equipment sometime during the second week in October. The pavilion will be the last thing to go in, starting some time in December. Mr. Garman stated that they hope to have the work completed in January, with landscaping to be done in March.

The town has received another grant for Phase II in the form of \$250,000 from the NC Parks and Recreation Trust Fund and they will be applying from a matching grant from the Outer Banks Visitors Bureau. Mr. Garman hopes to start working on Phase II in fall of 2017.

Mr. Garman also noted that the town is trying to get the arts community involved and Staff is working with the Dare County Arts Council to do an art event next year.

### ***Discussion Item***

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

Ms. Wyatt stated that no one has sent her any items that they want to prohibit. She is continuing to work on formatting of document and asked the Board to please send her any items that they would like to see added to the list of prohibited items.

### ***Planning Board Members' Agenda***

None

### ***Planning Board Chairman's Agenda***

None

### ***Adjournment***

There being no further business to discuss, the meeting was adjourned at 3:56 PM.

Respectfully submitted,

Lily Campos Nieberding

## STAFF REPORT

**TO:** Planning Board  
**FROM:** Andy Garman, Deputy Town Manager  
Kelly Wyatt, Deputy Planning Director  
**DATE:** October 14, 2016  
**SUBJECT:** Consideration of zoning ordinance text amendments to permit "Cottage Court" as an allowable use within the Town.

Last year the Planning Board and Board of Commissioners reviewed regulations pertaining to cottage courts. For the past 30 years, cottage courts have been considered a nonconforming use by the town's ordinance. Therefore, no expansions to these properties have been allowed except for general maintenance and repairs. Modifications to the ordinance last year now allow repairs, additions and expansions to existing cottage court properties. However, cottage courts were not removed as a nonconforming use. Consequently, it is still not possible to develop a new cottage court within the town except as allowed in the residential group development ordinance which was approved in late 2014. In these cases, only existing nonconforming lots of record may be recombined to create a cluster housing development and this is allowed under very specific circumstances.

During the course of working on revisions to the town's land use plan and zoning ordinance (Focus Nags Head), there has been much discussion about diversity of accommodations. One main goal expressed is to improve the variety of accommodations within the town, including transient uses such as hotels and cottage courts, to provide more opportunities for short-stay visitors. While the town has made a number of changes to the ordinance over the years to promote hotel development, it has been noted by the Focus Advisory Committee that cottage courts may represent a more viable alternative to hotels from a development and from a land use compatibility standpoint. As the town continues to experience the loss of older hotels and motels, there is a renewed sense of urgency to consider the expansion of the cottage court as a viable use of property.

In June, the Planning Board agreed to initiate a text amendment to add cottage courts as a use within the town's zoning ordinance and to develop appropriate standards for regulating these uses. Staff collected information to assist the Planning Board through the ordinance drafting process to include a map of existing cottage courts, the general site and building characteristics for each cottage court as well as photographs, the current zoning map, the town's current regulations pertaining to cluster housing, and draft ordinances for cottage courts from other communities.

A primary consideration for these regulations included determining where the cottage court uses are most appropriately located. Based on the map information provided, most existing cottage courts are located on parcels fronting NC 12 or SR 1243 (South Old Oregon Inlet Road) or on parcels east of these roadways where there is easy access to the ocean. These properties are in the R-2, C-2, and CR zoning districts. Generally no cottage courts are located in the R-1 (historic district) or SPD-C (Village at Nags Head) zoning districts. Areas of town further west along Memorial or Wrightsville Avenues, in private or public streets west of SR 1243, and areas west of US 158 consist of primarily single-family homes with fewer transient uses such as

cottage courts or hotels. The Planning Board is recommending allowing cottage courts as a conditional use in the R-2, C-2, and CR zoning districts on lots fronting NC 12 or 1243 or on lots east of these roadways.

The Planning Board has also created standards to define the number of units on each site, the minimum lot size for a cottage court, the minimum and maximum square footage of each cottage unit, building height, separation between buildings, property line setbacks, lot coverage, building design requirements, and a requirement that cottage courts will operate to serve transient guests similar to the town's current language for hotels. The final ordinance standards are largely designed to emulate the characteristics and function of the existing cottage courts studied during the analysis.

To test the proposed regulations, the Planning Board reviewed an existing cottage court site to determine if it would be possible to recreate this under the proposed language. Staff analyzed the Sea Spray Cottages and found that this development is largely consistent with the proposed standards.

Some additional considerations included the ordinance:

- Cottages should be designed as traditional dwelling units and not as one room units or cabins. A provision has been added that units must have separate sleeping, living and bathing quarters.
- In order to encourage unique design for individual units as well as to control the overall intensity of the site, a provision has been added that at least 1/3 of the units must not exceed a single story.
- A community pool will be allowed but individual cottages cannot have pools.
- To accommodate owner occupancy of the site or on-site management, a garage may be allowed to serve the owner or manager's place of residence.
- To limit overall paved areas, the 20 foot accessway may be reduced to 12 feet wide once the accessway is within 150' of all sides of all structures on the property. This is consistent with fire code requirements.
- Cottage courts can have one larger structure on the property with other uses. This appears to be a traditional development characteristic found in several existing cottage courts where restaurant, retail, or support activities occur in conjunction with the cottage court use.
- Revisions to the existing non-conforming cottage court ordinance have been included to create consistency with the proposed language.

At its October regular meeting, the Board of Commissioners held a public hearing on the proposed ordinance. The Board of Commissioners requested that the Planning Board review the ordinance again to address the following items:

- Consider additional language to ensure that cottage courts operate commercially similar to hotels under a unified management scheme.
- Create a maximum size for structures in section 48-378 (b). As the Planning Board will recall, the ordinance establishes a maximum size for cottage court units. It allows one structure to be larger than the maximum size if combined with another use. The ordinance did not include a specific size limitation for this structure.
- Clarify that pools are not allowed as accessory uses to individual cottage court units.

Staff has drafted language to address the aforementioned concerns in the attached ordinance (see highlighted items).

Attachments:

- Draft Cottage Court Ordinance

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

**ARTICLE I. Purpose(s) and Authority.**

**WHEREAS**, pursuant to N.C.G.S. § 160A-381, the Town of Nags Head (the "Town") may enact and amend ordinances regulating the zoning and development of land within its jurisdiction and specifically the location and use of buildings, structures and land. Pursuant to this authority and the additional authority granted by N.C.G.S. Chap. 160A, Art. 19 et. seq, the Town has adopted a comprehensive zoning ordinance (the "Town's Zoning Ordinance") and has codified the same as Chapter 48 of the Town's Code of Ordinances (the "Town Code"); and

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

**WHEREAS**, the Town has experienced a significant loss of hotels and other forms of short-stay accommodations over the past 20 years; and

**WHEREAS**, it has been documented by the Outer Banks Visitors Bureau that these types of accommodations are often the entry point for the first time visitor to the Outer Banks and serve to extend the shoulder season by providing less than one week stays; and

**WHEREAS**, the Town recognizes that a diversity of accommodations is healthy for the economy of the community; and

**WHEREAS**, the Town amended its regulations in 2004 to facilitate the development of hotels and has seen little hotel development with the enactment of this ordinance; and

**WHEREAS**, cottage courts have traditionally offered a viable alternative to hotels to provide short-stay accommodations and are a desirable and traditional use found in the town; and

**WHEREAS**, a zoning ordinance text amendment was drafted by Planning Staff by request of the Board of Commissioners and Planning Board to reinstate cottage courts as a viable use in the Town; and

**WHEREAS**, the 2010 Land Use Plan states the that the Town desires to support local business owners; and

**WHEREAS**, the Town finds that these text amendments are consistent with the goals, objectives and policies of the Town's adopted Land Use Plan, and that this is action is reasonable and in the public interest,

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

## **ARTICLE II. Construction.**

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

## **ARTICLE III. Amendment of Zoning Ordinance.**

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

PART I. That Section **48-7. – Definitions of specific words and terms**, be amended as follows:

*Cottage court* means ~~multiple residential buildings~~ three or more detached single-family dwellings on one lot. ~~Since August 5, 1985, no such development has been allowed in this jurisdiction. Any such development legally existing on that date became a nonconforming use.~~ Cottage courts shall be designed and intended for transient guests on a rental basis, with the exception of living quarters for the property owner or on-site management.

PART II. That Section **48-128, Cottage Courts**, be amended as follows:

Sec. 48-128. – Nonconforming Cottage courts.

- (a) Cottage courts which do not conform to the definition of 'cottage court' contained in Town Code Section 48-7 and also to the provisions of Town Code Section 48-378 which were legal at the time of their placement or construction but which would not be permitted by the regulations imposed by this chapter may continue, subject to the following provisions:
- (1) Existing individual dwelling units in a nonconforming cottage court may be replaced provided that replacement structures conform to the provisions of Town Code Section 48-378 shall be of the same or lesser size and the degree of structure nonconformity is not increased or do not increase the degree of structure or site nonconformity.
  - (2) All replacement cottage court units, substantially improved and substantially damaged cottage court units shall conform with the provisions of chapter 22, article II, Flood Damage Prevention.
  - (3) For the purpose of this section, structures will be considered individually when determining thresholds for repair, maintenance, and destruction.
  - (4) No existing individual dwelling unit in a nonconforming cottage court shall be enlarged, extended, moved or structurally altered; except as provided below:
    - a. 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 for single family dwellings in the applicable zoning district if those setbacks can be met in Town Code Section 48-378.

- b. Minor modifications to a nonconforming cottage court dwelling unit or cottage court site, may be approved administratively by the planning director or his designee. Minor modifications 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.
  - c. 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 Town Code section 48-525. Major modifications include any proposal which will result in a net increase in habitable area of nonconforming cottage court units.
  - d. All improvements must meet the dimensional requirements of the district in which they are located. When a lot coverage non-conformity 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 Town Code section 48-124.
- (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.
- (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 chapter and any other applicable federal or state regulations.
- (7) Nothing in this chapter 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.

PART III. That Section **48-378, Cottage Courts**, be added as follows:

Sec. 48-378. – Cottage Courts.

Cottage Courts are permitted as a conditional use in the CR, C-2, and R-2 zoning districts, provided the following requirements and conditions are met:

- (a) Location. Cottage Courts shall only be located on properties with frontage on NC 12 or SR 1243 or on properties east of NC 12 or SR 1243.
- (b) Size and arrangement. Individual dwelling units must be designed and arranged for occupancy by one family operating as a housekeeping unit and shall contain at least five hundred (500) but no more than two thousand (2,000) square feet of gross floor

area. One structure may be up to 5,000 square feet if it is combined with on-site management or another complementary accessory or principal use. Each cottage court unit shall contain separate sleeping, bathing, and living areas.

(c) *Architectural design.*

(1) Individual units must receive at least 75 architectural design points based on the criteria established in the Town of Nags Head Residential Design Guidelines (See Appendix A).

(2) Individual cottages shall not contain more than one and one-half (1 ½) stories. At least one-third (1/3) of the cottage court units shall not exceed one story.

(3) Dwelling units shall meet the minimum roof pitch requirements established in the Town of Nags Head Residential Design Guidelines.

(4) Dwelling units shall not contain enclosed attached or detached garages but may contain an open parking area underneath the structure. However, an owner or on-site manager living on the property may have one garage or shed serving their individual unit or living quarters.

(5) Cottages shall be oriented towards a common open space or shared drive aisle.

(d) *Density.* Cottage courts shall contain at least three (3) but not more than ten (10) individual dwelling units.

(e) *Building separation and setbacks.* Dwelling units shall be separated from one another by a minimum of ten (10) feet, including projections. Dwelling units shall have a minimum fifteen (15) foot front yard setback, eight (8) foot side yard setback, and twenty-five (25) foot rear yard setback.

(f) *Minimum lot size.* Cottage court lots must be at least 20,000 square feet in area.

(g) *Lot coverage.* The lot coverage shall not exceed 55 percent. When performing lot coverage calculations, the residential lot coverage calculation sheet included with the site development application, as amended, shall be completed and submitted for review and approval.

(1) Permeable pavement:

a. For the purposes of determining lot coverage, the total square footage of permeable pavement materials is multiplied by 0.67.

b. Permeable pavement materials include porous concrete, permeable interlocking concrete pavers, concrete grid pavers, Turfstone™, and other proven technologies available as covered in the NC Best Management Practices Manual and as approved by the town engineer for appropriateness to the site and existing conditions. Porous concrete shall be designed and installed in accordance with ACI specifications, or equivalent standard, with hydrological, operation and maintenance considerations. Installation shall be conducted by a contractor certified in the installation of the type of pavement system chosen.

c. The town encourages use of pervious materials and new technologies that provide for safe and efficient driveway and parking areas and that appropriately address stormwater runoff issues. A minimum of 20 percent of

the surface area of the parking area and drive aisles shall be constructed using permeable surface materials, unless it can be demonstrated that a topographic or hydrologic constraint exists that would limit its use and effectiveness.

- d. No porous concrete shall be used east of NC 1243 (South Old Oregon Inlet Road) or NC 12 (South Virginia Dare Trail). Compacted gravel shall not be considered permeable pavement.
- (2) In the case of an oceanfront lot, only that area landward of the first line of stable natural vegetation or static vegetation line (as defined by CAMA) shall be used for calculating lot coverage. Where an oceanfront lot has little or no stable natural vegetation, the line of such vegetation shall be a line extending between the nearest such vegetation existing north and south of the lot.
- (h) Driveway access. Each dwelling unit shall have access to a shared accessway. The shared accessway must be designed to a minimum width of 20 feet to allow firefighting apparatus to locate within 150 feet of all sides of all structures on the property. The shared accessway may be reduced to a minimum width of 12 feet where it is closer than 150 feet to all sides of all structures on the property. An accessway width less than 20 feet may be reviewed and approved by the fire marshal in conjunction with an approved alternative life safety plan.
- (i) 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.
- (j) Refuse and recycling. Cottage courts shall provide a suitable location for a dumpster as determined by the Director of Public Works. Dumpster areas shall be appropriately screened and shall not be located in the required front yard of the property.
- (k) Pools. Cottage courts may have one community pool serving the all of the units on the property. Individual units may not have pools.
- (l) Utility meters of any type for individual units are prohibited.
- (m) Cottage courts shall operate under a single, unified management operation which arranges for reservations and attends to daily guest needs including cleaning and linen services. There shall be a uniform key entry system operated by management staff.
- (n) On a site to be used for cottage court development, existing residential structures, which may become nonconforming with respect to the standards of this section, may be permitted to remain however the extent of the nonconformity shall not be increased.

PART IV. That Section **48-403 (c)**, be amended as follows:

Sec. 48-403. - R-2 medium-density residential district.

(c) *Conditional uses.* The following uses are permitted in the R-2 district, subject to the requirements of this R-2 district and additional regulations and requirements imposed by the board of commissioners as provided in article XIV of this chapter:

(12) Cottage Courts, subject to the requirements of Town Code Section 48-378.

PART V. That Section **48-405 (c)**, be amended as follows:

Sec. 48-405. - CR commercial residential district.

(c) *Conditional uses.* The following uses shall be permitted in the CR district, subject to the requirements of this CR district and additional regulations and requirements imposed by the board of commissioners as provided in article XIV of this chapter:

(8) Cottage Courts, subject to the requirements of Town Code Section 48-378.

PART VI. That Section **48-407 (c)**, be amended as follows:

Sec. 48-407. - C-2 general commercial district.

(c) *Conditional uses.* The following uses shall be permitted subject to the requirements of this C-2 district and additional regulations and requirements imposed by the board of commissioners as provided in article XIX of this chapter:

(32) Cottage Courts, subject to the requirements of Town Code Section 48-378.

PART VII. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. This ordinance shall be in full force and effect from and after the \_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Robert C. Edwards, Mayor  
Town of Nags Head

ATTEST:

\_\_\_\_\_  
Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

Date adopted: \_\_\_\_\_

Motion to adopt by Commissioner \_\_\_\_\_

Motion seconded by Commissioner \_\_\_\_\_

Vote: AYES \_\_\_\_\_ NAYS \_\_\_\_\_

## STAFF REPORT

**TO:** Planning Board

**FROM:** Kelly Wyatt, Deputy Planning Director and Zoning Administrator

Andy Garman, Deputy Town Manager

**DATE:** October 18, 2016

**SUBJECT:** Consideration of a zoning ordinance text amendment to require that any new commercial structures within the C-2, General Commercial Zoning District with a ground floor habitable area 15,000 square feet or greater be permitted via the Conditional Use review process.

At its September 29, 2016 retreat, the Board of Commissioners requested that the Planning Board and Planning Staff review a zoning ordinance amendment which would require new commercial structures with an area of 15,000 square feet or greater within the Town's C-2 General Commercial Zoning District be approved via the Conditional Use review process.

Currently, there are various commercial uses allowed in the C-2, General Commercial Zoning District that are permitted by right and therefore approved simply through the site plan review process. The site plan review process does not provide a mechanism for the Planning Board and governing body to place site specific conditions upon a development based on the circumstances of the property and surrounding land uses. Also, the site plan review process does not require affirmative findings of fact to demonstrate that the proposed development is consistent with the town's ordinances, land use plan, and overall community development goals. These findings of fact often include:

- 1. The applicant has met the requirements of the Town of Nags Head Zoning Ordinance, Subdivision Ordinance and other applicable ordinances.*
- 2. The use will not materially endanger the public health and safety if located where proposed and developed according to the plan as submitted.*
- 3. The use as proposed will not overburden the fire fighting capabilities and the municipal water supply capacity of the Town.*

Larger buildings, by their nature, tend to generate more intense uses of property which can create land use and neighborhood compatibility issues as well as greater community impacts if not carefully planned. The conditional use permit process is designed to allow the community to consider a broad range of land use issues and place conditions on development projects to ensure they meet community goals. The purpose of this amendment is to provide the Planning Board and Board of Commissioners flexibility and discretion when reviewing large commercial projects to mitigate the intensity of the proposed development and any associated negative community impacts.

Staff will be available to discuss, edit and add to the conditions noted below at the meeting.

Attachment(s):

- Draft ordinance

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

**ARTICLE I. Purpose(s) and Authority.**

**WHEREAS**, pursuant to N.C.G.S. § 160A-381, the Town of Nags Head (the "Town") may enact and amend ordinances regulating the zoning and development of land within its jurisdiction and specifically the location and use of buildings, structures and land. Pursuant to this authority and the additional authority granted by N.C.G.S. Chap. 160A, Art. 19 et. seq, the Town has adopted a comprehensive zoning ordinance (the "Town's Zoning Ordinance") and has codified the same as Chapter 48 of the Town's Code of Ordinances (the "Town Code"); and

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

**WHEREAS**, a text amendment was initiated by the Planning Board at the request of the Board of Commissioners to require newly constructed commercial buildings with a ground floor habitable area of 15,000 square feet or greater be reviewed and approved via the Conditional Use process.

**WHEREAS**, larger buildings, by their nature, tend to generate more intense uses of property which can create land use and neighborhood compatibility issues as well as greater community impacts if not carefully planned. The conditional use permit process is designed to allow the town to consider a broad range of land use issues and place conditions on large development projects to ensure they meet community goals.

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

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

**ARTICLE II. Construction.**

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

**ARTICLE III. Amendment of Zoning Ordinance.**

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

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

(29) Commercial structures with a ground floor habitable area of 15,000 square feet or greater. Approval shall be based on demonstrated consistency of the proposed development with the following criteria, as applicable:

- a. That the site plan and proposed use will be compatible with existing and anticipated land uses and character of the immediate neighborhood and surrounding area.
- b. That the proposed site is properly landscaped and irrigated around buildings, along sidewalks, and provides sufficient buffering and separation to adjacent properties. That the retention of the site's existing topography, vegetation, and natural features has been given priority consideration in the overall project design. The developer shall make provisions for the continued maintenance of landscaped areas and open spaces.
- c. That traffic generated from the proposed development shall not substantially degrade the level of service on adjacent roads or intersections and/or create additional traffic safety hazards. Driveway and curb cut access shall be designed to limit conflicts with adjacent streets or driveways and should direct traffic onto more heavily traveled roadways and away from residential neighborhoods.
- d. That the architectural design and aesthetic features of the proposed building(s) are compatible with the town's architectural design standards as well as existing buildings in the surrounding area and within the town as a whole.
- e. That the proposed use does not generate excessive noise, light, trash, intense activity, traffic, overflow parking, storm water runoff or any other conditions that degrade the value or peaceful enjoyment of adjacent properties.
- f. That adequate provisions have been made for light, air, access, and privacy in the arrangement of buildings, one to another and to neighboring properties.

PART II. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. This ordinance shall be in full force and effect from and after the \_\_\_ day of \_\_\_ 2016.

\_\_\_\_\_  
Robert C. Edwards, Mayor  
Town of Nags Head

ATTEST:

\_\_\_\_\_  
Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_

Town Attorney

Date adopted: \_\_\_\_\_

Motion to adopt by Commissioner \_\_\_\_\_

Motion seconded by Commissioner \_\_\_\_\_

Vote: \_\_\_\_\_ AYES \_\_\_\_\_ NAYS