



**MINUTES
TOWN OF NAGS HEAD
BOARD OF COMMISSIONERS
RECESSED MEETING
WEDNESDAY, March 15, 2023**

The Nags Head Board of Commissioners met in person at the Board Room located at 5401 S Croatan Highway, Nags Head, North Carolina on Wednesday, March 15, 2023, at 9:00 a.m. for a Recessed Meeting.

Board members

Present: Mayor Ben Cahoon; Comr. Renée Cahoon; Comr. Kevin Brinkley; and Comr. Bob Sanders

**Board members
Absent:** Mayor Pro Tem Michael Siers

Others present: Town Manager Andy Garman; Attorney John Leidy; Kelly Wyatt; Amy Miller; David Ryan; Nancy Carawan; Perry Hale; Randy Wells; Karen Snyder; Shane Hite; Kate Jones; John Harris; Ron Payne; Basil Belsches; Sandra Allen; Eddie Goodrich; Bobby Harrell; Beaman Hines; Cindy Brightbill; Philip Foreman; Crouse Gray; Mike Roderer; Summer Stevens; and Dep. Town Clerk Michelle Gray

CALL TO ORDER

Mayor Cahoon called the meeting to order at 9 a.m.

ADOPTION OF AGENDA

MOTION: Comr. Brinkley made a motion to approve the agenda as presented. The motion was seconded by Comr. Sanders which passed 4 – 0 (Mayor Pro Tem Siers was excused.).

PUBLIC COMMENT

Mayor Cahoon opened Public Comment at 9:02 a.m. as Attorney Leidy arrived at 9:05.

PUBLIC COMMENT BASIL BELSCHES

Basil Belsches, Nags Head resident; spoke of the amendment changes to the UDO the Board is considering – he supports the proposed changes and hasn't seen the zoning amendment map yet. He and his neighbors are hopeful the board will make the properties currently on the west side of Va Dare Trail between E Hollowell and Conch streets and the east side of Memorial between Bainbridge and E Hollowell streets to R-3 zoning also. These properties are currently zoned C-2 and are proposed to be rezoned to R-3, Mr. Belsches added that the properties already meet the R-3 residential requirements and will ensure the look and feel of the historic character area. He appreciates what the Board, Planning Board and staff have done on this issue.

PUBLIC COMMENT – JOHN HARRIS

John Harris business owner, Kitty Hawk Kites; he thanked the Board and staff for making the necessary proposed changes to the UDO allowing businesses to build back to their existing footprint if a catastrophe takes place on the property. He stated the lot coverage is more restrictive in the proposed C-5 zone than the existing C-2 zone as the proposed setback is 75 feet; concerned the proposed changes are directed to commercial property owners; would like the C-2 zone to remain in the area.

PUBLIC COMMENT – PHILIP FOREMAN

Philip Foreman business owner, Brew Thru; he thanked the Board for the changes made so far to the UDO; he would like the changes to be fair to each other and asked the Board to consider if it were their business. He felt everyone in the proposed C-5 district was caught off guard.

PUBLIC COMMENT – MIKE RODERER

Mike Roderer business owner, Old Nags Head Café – thanked the Board, Planning Board, and staff for considering changes that were voiced at the March 1st Board meeting. He still has concerns about the proposed changes: 1) uncertain about how the new proposed C-5 zoning would alter his current property rights in the future; 2) the criteria used for determining square footage of a structure facing NC 12 and where the 75-foot measurement originates from; 3) lot coverage reduced to 45% reduced from 55%. The present C-2 zoning has worked for many decades with no issue, consider allowing the current C-2 zoning setback and lot coverage requirements to be adopted into the proposed C-5 zoning area.

PUBLIC COMMENT – RON PAYNE

Ron Payne resident, Dare County Board of Education Chair; he spoke that Dare County is recruiting teachers for the upcoming school year and that housing is the biggest hurdle teachers coming to the area have and noted the teacher housing is at full capacity. He wants to attract the brightest and best teachers; housing is critical and essential. He urged the Board to not kick this issue down the road any longer.

PUBLIC COMMENT – CROUSE GRAY

Crouse Gray local attorney; represents several businesses in the community. Mr. Gray quoted a portion of the proposed C-5 ordinance pertaining to lot coverage and asked why the proposed lot coverage was reduced to 45% from 55%. He added the businesses in this district reflect what the town is and urged the Board to not decrease the lot coverage amount.

PUBLIC COMMENT – BOBBY HARRELL

Bobby Harrell commercial business owner; represents Elliott Katherman property owner of the 4.7-acre tract on the corner of Hollowell St. He stated that Mr. Katherman has lost value to his property as it was being considered for affordable housing concerning the proposed rezoning of the property by the Town. Mr. Katherman has invested in the Town for many years; he has requested for his property to be rezoned to C-5 from C-2. Mr. Harrell encouraged the Board to look at multi-family structures for essential housing as well as mixed use possibilities to help attract educators back to the area and local business work force. He asked the Board to look carefully at the setbacks proposed in the C-5 district and not penalize them. The current ordinance has been in existence since 1969 is working and why change it. Lastly, he thanked the Board, Planning Board, and staff for their work on this issue and asked they take the time to make it right.

There being no one else present who wished to speak, Mayor Cahoon concluded Public Comment at 9:25 a.m.

CONSENT AGENDA

The Consent Agenda consisted of the following items:

Consideration of Tax Adjustment Report
Fee Proposal for Above-Ground Petroleum Equipment Removal/Re-installation and Canopy Installation for Public Services Redevelopment Plan

MOTION: Comr. Kevin Brinkley made a motion to approve the Consent Agenda as presented. The motion was seconded by Comr. Sanders which passed 4-0, Mayor Pro Tem Siers was excused.

The Tax Adjustment Report, as approved, is attached to and made a part of these minutes as shown in Addendum "A".

The agenda summary sheet action request concerning Fee Proposal for Above-Ground Petroleum Equipment Removal/Re-installation and Canopy Installation for Public Services Redevelopment Plan, as approved, read in part as follows:

"Staff requests Board of Commissioners authorization for the Town Manager to execute a contract with SPATCO Energy Solutions in an amount not to exceed \$414,124.16."

OLD BUSINESS/ITEMS TABLED FROM PREVIOUS MEETINGS

From March 1st Board meeting – Consideration of adoption of Unified Development Ordinance (UDO) amendments as it pertains to the Historic Character Area and the moratorium adopted October 19, 2022. Specifically, the Board of Commissioners will be considering the following:

- Adoption of the proposed text amendments to the UDO establishing a new zoning district, the C-5 Historic Character Commercial Zoning District, Development regulations and standards for C-5, Permitted uses for C-5, and Amendment to the Table of Uses for C-5
- Adoption of the proposed text amendments to the Town Code of Ordinances

On behalf of staff, Planning Director Kelly Wyatt thanked everyone for the kind words spoken concerning all the work that has gone into this amendment proposal.

She presented the proposed Unified Development Ordinance (UDO) and amendments to the Town Code of Ordinances, and the intensity of uses; the summary sheet which read in part as follows:

"Following the adoption of the October 19, 2022 moratorium prohibiting all non-residential developments located within the C-2, General Commercial Zoning District applicable to areas from Danube Street north to Hollowell Street, between US Highway 158 and NC 12, Planning staff and the Planning Board began working together to draft proposed regulatory mechanisms to ensure that the Town's vision is maintained and any future development within the Historic Character Area preserves and compliments the integrity of the area.

The following text amendments to the UDO are being proposed for Board of Commissioner consideration:

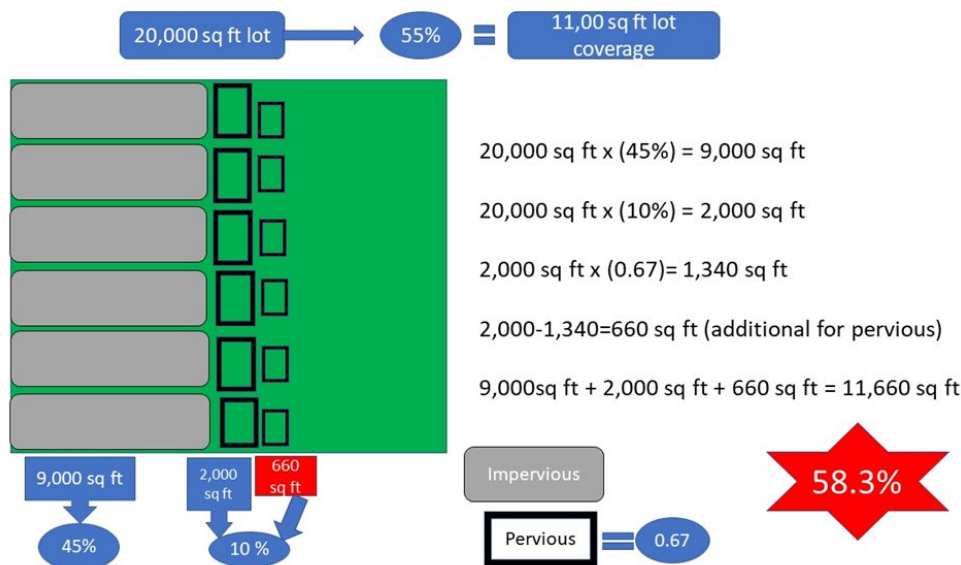
- Various text amendments to the Unified Development Ordinance establishing a new zoning district, the C-5, Historic Character Commercial District including the creation of intent narrative outlining the district's purpose.
- Amendments to Section 6.6, Table of Uses and Activities, proposing the uses to be allowed within the C-5 District.
- Amendments to Section 8.2, Development Standards to establish dimensional requirements for the C-5 District. Note that lot coverage allowances for the C-5 District are proposed under Section 8.6.6.4.
- Amendments to Section 8.3, Special Development Standards to outline special commercial building design criteria for both new and existing commercial structures within the C-5 District.
- Amendments to Section 10.24, related to signage allowances within the C-5 District, Section 10.82 related to the applicability of commercial design standards, Section 7.23 related to setbacks from sexually oriented businesses, Section 7.45 related to lot coverage for religious complexes, Section 7.78 related to wall and fence height.
- Amendments to Appendix A, Definitions to include reference to the C-5 District within the definition for "Commercial Transitional Protective Yard" and to propose definitions for the uses, "Convenience Store", "Fueling Station" and "Grocery Store".

The following text amendments to the Town Code are being proposed for the Board of Commissioners consideration:

- Amendment to Section 12-143, Licensing of sexually oriented businesses to include reference to the C-5 District.
- Amendment to Section 16-73, Maximum permitted sound levels by zoning district to include reference to the C-5 District.

Amendments requested by the Board of Commissioners at their March 1st, 2023; meeting have since been incorporated into proposed ordinance for their consideration."

Ms. Wyatt provided a drawing explaining the differences between pervious and impervious materials on a lot regarding lot coverage.



Mayor Cahoon confirmed that a non-conforming structure use would now be conforming uses and read from *Section 5.3 - Nonconforming Structure with Conforming Use*.

"5.3.2. A nonconforming structure occupied by a conforming principal use destroyed or otherwise modified by any means may be repaired, maintained, or replaced with an identical or similar structure regardless of value provided the repair, maintenance or replacement does not create any new structural nonconformities or increase the degree of existing structural nonconformities.

5.3.3. Should such structure be moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations for the district in which it is located after it is moved, except as provided in subsection 5.3.4."

Mayor Cahoon gave the example of the Kitty Hawk Kites building – if the building was destroyed by fire, storm, etc. the building could be rebuilt as was, would the owner be required to adhere to the proposed changes. Ms. Wyatt answered no but added that she would be hopeful the new structure would be a little more conforming.

He gave another example concerning lot coverage and noted that the threshold for pervious coverage is different, but the result is the same.

Comr. Renee Cahoon complimented Ms. Wyatt and her staff for doing a great job in a short time and providing everything the Board asked for.

Ms. Wyatt was asked to provide some history on the Soundside Rd residential overlay district, noting a lot of the houses were moved to the oceanfront creating the Historic Cottage Row district. She added because of the history that more stringent regulations were applied to the Soundside Rd residential overlay area i.e., lot coverage, setbacks, etc. When preparing the proposal for the C-5 district, staff looked to the Soundside Rd residential overlay area as an example and apply the same dimensional standard.

Comr. Kevin Brinkley thanked Ms. Wyatt and her staff for their work on the proposed ordinance.

Comr. Sanders asked if the non-conformities in C-2 were different. Ms. Wyatt stated the proposed language would apply to the entire town for non-conformities.

Comr. Renee Cahoon confirmed that today's proposed text amendments only, the proposed map changes will be considered in April.

Comr. Brinkley commented the questions that were asked were answered with great care; the proposed lot coverage and setback numbers were thought out well and staff did a great job.

Comr. Sanders stated the meeting on March 1st was a good meeting, the proposed amendments were focused from the 2017 Land Use Plan and protect the future of the town. Hopefully all concerns have been addressed and moving forward in the right direction.

Comr. Renee Cahoon stated the confirmation that the size limits are per structure not in totality on a lot and it doesn't diminish anyone's use of their property.

Mayor Cahoon stated that he served on both the UDO committee and the Land Use Plan committee. The Land Use Plan set forth a vision for the town and looked at individual areas for future planning. The committee did not want large buildings along the beach road.

By limiting the intensity of use the developer will go to the extreme lot coverage and it will be more expensive. Previous pavement bonus in lot coverage should be an incentive to reduce/control stormwater runoff but feels it may water-down the incentive because it's not tied to stormwater coverage.

Comr. Renee Cahoon noted that at one time Food Lion at MP 14 wanted to be between the highways, the town had visual values and did not allow large structures along the beach road or between the highways.

MOTION: Comr. Brinkley made a motion to approve the text amendments to the UDO establishing a new zoning district, the C-5 Historic Character Commercial Zoning District, Development regulations and standards for C-5, Permitted uses for C-5, and Amendment to the Table of Uses for C-5 as presented. Comr. Renee Cahoon seconded the motion which passed 4-0, Mayor Pro Tem Siers was excused.

After a brief break, the Mayor clarified that the motion included the proposed text amendments to the Town Code of Ordinances as well.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN ATTORNEY

Attorney Leidy – had nothing to report.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER

Town Manager Garman – had nothing to report.

BOARD OF COMMISSIONERS AGENDA

Comr. Renee Cahoon – had nothing to report.

Comr. Brinkley – he stated that it's his opinion that property along Hwy 158 should be zoned commercial.

Comr. Sanders – had nothing to report.

MAYOR'S AGENDA

Mayor Cahoon – invited anyone interested in the Kitty Hawk Wind Project to attend the Community Open House on March 15th at Kitty Hawk Pier House or Thursday, March 16th at Jennette's Pier between 4:30-7:00 pm to provide input on the plans.

ADJOURNMENT

MOTION: Comr. Brinkley made a motion to adjourn to a budget workshop. The motion was seconded by Comr. Sanders which passed 4 – 0 (Mayor Pro Tem Siers was excused). The time was 10:45 a.m.

Michelle H Gray, Deputy Town Clerk

Date Approved: **April 5, 2023**

Mayor: _____
Benjamin Cahoon