

**Town of Nags Head
Planning Board
June 16, 2020**

The Planning Board of the Town of Nags Head met on Tuesday June 16, 2020. Due to Covid-19 restrictions, this meeting was held electronically/remotely utilizing the online ZOOM meeting platform. Members of the public were invited to attend the meeting using the ZOOM platform or app, or by calling in using a phone, and the meeting were conducted with the members participating by simultaneous communication.

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

Members Present

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

Members Absent

None

Others Present

Via Zoom: Michael Zehner, Kelly Wyatt, Holly White, Kate Jones and Lily Nieberding

Approval of Agenda

Chair Vaughan asked for a motion to approve the agenda. David Elder moved to approve as presented, Meade Gwinn seconded, and the motion passed unanimously via a roll call vote.

Public Comment/Audience Response

None

Approval of Minutes

Chair Vaughan asked for a motion to approve the minutes of the May 19, 2020 meeting. David Elder moved to approve as presented, Megan Lambert seconded, and the motion passed unanimously via roll call vote with Molly Harrison abstaining due to technical difficulties.

Action Items

Reconsideration Of A Revised Preliminary Plat for a Major Subdivision, known as Coastal Villas, for an approximately 11.17 acre property, zoned R-2, Medium Density Residential, owned by Nags Head Construction (applicant), located on the west side of US 158, approximately 300 feet south of the intersection of W. Soundside Road and US 158 (Parcel# 006749004; PIN# 989108886987); the revised Preliminary Plat proposes to create 17 building lots, along with an associated street and other required improvements.

This item was presented by Planning Director, Michael Zehner. This proposal was initially presented to the Planning Board in December, and then the Board of Commissioners for their meeting on January 8, 2020. Following a presentation by Staff and discussion amongst the Board of Commissioners, the Board passed a motion to table consideration of the Preliminary Plat until the Board of Commissioners March 2020 meeting and to ask that Staff facilitate a discussion between the developer and the Fourth Street property owners to have one curb cut, one right-of-way off of US 158 as a better solution for access. Prior to the March 4, 2020 Board of Commissioners meeting, the applicant requested a continuance to the Board's May 6, 2020 meeting, which was granted.

Staff worked as directed to facilitate discussions between the developer of the subject subdivision and the owner of 6 lots abutting the paper street known as Fourth Street. Based on these discussions, the applicant revised their plan and proposed to relocate access to the subdivision to US 158/S. Croatan Highway (eliminating the street/vehicular connection to Sea Bass Court) and extend the proposed street to allow for connectivity to the existing Fourth Street right-of-way; the revision of the plan was determined to require reconsideration by the Planning Board.

The revised preliminary plat was reviewed by the Planning Board at a meeting on April 21, 2020. Ultimately, the Board unanimously recommended approval of the Preliminary Plat as recommended by Staff but noted the Board's concerns related to safety due to the possibility of two additional curb cuts on 158, and a preference for the preliminary plat that had been previously presented to and recommended.

Mr. Zehner explained that during the Planning Board's review in April, member Gary Ferguson had inquired as to the circumstances leading to the creation of the property subject to the preliminary plat. Following the meeting, in coordination with the applicant and their representatives, as well as the Town Attorney, it was determined that a division in 2004 that was intended to establish a separate 1.03 acre parcel to be transferred to Dare County for use as a future well site, had not been properly subdivided. While a preliminary plat and associated waivers for this division had been approved by the Board of Commissioners, there is no record that a final plat for this subdivision was ever produced, approved, or recorded. Therefore, the applicant has revised the preliminary plat further to include this additional 1.03 acres and is proposing to re-establish the lot as part of the proposed subdivision; similar to the proposal in 2004, the preliminary plat requires waivers from the subdivision regulations.

Mr. Zehner proceeded to discuss these waivers for the Board noting that where the Planning Board finds that, due to the special circumstances of a particular plat, the provision of certain required improvements is not requisite in the interest of public health, safety and general welfare or is inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed subdivision, it may recommend and the Board of Commissioners may waive such requirements subject to appropriate conditions.

The proposed subdivision would create seventeen (17) building lots, located along a new street connecting directly to US 158/ S. Croatan Highway; additionally, the preliminary plat includes two open space areas, as well as the creation of Lot A-2, a 1.03 acre lot owned by Dare County with notes indicating the "lot shall be limited to a well production site for the Dare County reverse osmosis plant." The new street, identified as Coastal Breeze Way, would terminate at the southern property line, allowing future connectivity to an existing paper right-of-way identified as Fourth Street.

The proposed Preliminary Plat provides for a cul-de-sac to be developed where the proposed new street terminates, with allowances for the cul-de-sac to be removed if the existing Fourth Street right-of-way to the south is improved.

The current revised version of the preliminary plat provides for the multi-use path extension through the Mariners Way paper right-of-way to meander away from the southern property line. Staff believes this is responsive to considerations previously requested by a property owner along Sea Bass Court, while also considering potential impacts to Live Oak trees proposed to be retained within this area.

With the exception of the waivers noted above, it was determined by the UDO Administrator that the plan for the proposed development meets the requirements of the UDO.

A resident did inquire with Staff as to whether the proposed street name of Coastal Breeze Way was too close to the name of an existing street, W. Breeze Way. Pursuant to Section 10.66.10., Street Names and Signs, "All streets must be named so as not to duplicate the names of any existing streets in the Town. Such names shall be approved by the UDO Administrator and incorporated on the preliminary and final plats." Staff contacted the Postmaster for the Nags Head Post Office, who responded that they did not anticipate a problem; however, Staff has requested that the applicant provide some alternatives to alleviate any perceived concerns that the proposed name may lead to confusion.

The proposed preliminary plat was distributed for review by Town Staff. Returned comments noted that eventual construction drawings should include the planned location of water taps, further reference to the applicant's commitment to relocate the water line at the south of the subdivision to within the easement, the need to coordinate with Town Public Works on the installation of a waterline extension toward Sea Bass Court, and further requested that the applicant continue attempts to coordinate with NCDOT. On this last point, the applicant's engineer did communicate that they received "preliminary verbal confirmation from NCDOT...that they will allow access off of S. Croatan Hwy," and were expecting to receive written confirmation with any applicable restriction or requirements.

In their consideration of the most recently revised version of the preliminary plat, with respect to the necessary waivers, the Board should consider a specific recommendation on the waivers, based upon whether the Board finds that the waivers are appropriate, with or without conditions, due to the special circumstances of a particular plat, the provision of certain required improvements is not requisite in the interest of public health, safety and general welfare or is inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed subdivision.

Staff would recommend approval of the Preliminary Plat as revised and proposed, with the three conditions noted in Mr. Zehner's staff memorandum. With the exception of the requested waivers, Staff is of the opinion that the Preliminary Plat complies with all applicable requirements and that the applicant has addressed all issued comments; additionally, Staff is of the opinion that the Proposed Subdivision is consistent with applicable policy considerations. With respect to the requested waivers, Staff is of the opinion that the intended use of lot A-2 is a special circumstance, that, when taken into consideration with the existing easement, does not necessitate frontage in the interest of public health, safety and general welfare or preclude direct access to US 158 as inappropriate; given notes on the preliminary plat restricting the use of the lot and the existing easement, Staff does not recommend conditions specific to the requested waivers.

Cathleen Saunders with Quible & Associates addressed the Board. Ms. Saunders confirmed that they had received verbal confirmation from NC DOT that they will allow the single connection to US 158

and have indicated that they will provide this in writing. She did not know if there will be any restrictions on that connection to the bypass. Ms. Saunders noted that the developer is completely willing to have a right in, right out connection if that is what NC DOT deems is safe.

Ms. Saunders also noted that the developer is considering other street names to change from Coastal Breeze Way if that is what they are requested to do.

Ms. Saunders stated that generally other things have stayed the same since the last time the Board saw the proposal; Stormwater is being handled the same and they are providing for additional storage beyond the Town requirements. Ms. Saunders noted that they will be coordinating with Public Works with regards to water service.

There being no questions for the applicant, Chair Vaughan called for a discussion on the proposed plat.

Mr. Gwinn stated that he liked it, it looked fine to him. Ms. Harrison agreed with Mr. Gwinn. The Board did not have any comments or objections to the waivers or conditions.

There being no further discussion, Kristi Wright moved to recommend approval of the preliminary plat with Staff's three conditions and the required findings for the waivers. Meade Gwinn seconded the motion and the motion passed unanimously via roll call vote.

Planning Board member David Elder excused himself for the remainder of the meeting, the time was 10:12 a.m.

Consideration of a Text Amendment to the Unified Development Ordinance to permit "Real Estate Rental Management Facility" within the C-2, General Commercial Zoning District.

Deputy Planning Director Kelly Wyatt presented a proposed Text Amendment submitted by Cahoon and Kasten Architects, PC on behalf of Sumit Gupta of Legacy Home Services Inc. If adopted, this text amendment would amend the Unified Development Ordinance ("UDO") to permit the use "Real Estate Rental Management Facility" as a conditional use within the C-2, General Commercial Zoning District.

Ms. Wyatt noted that while it is important to remember that text amendments are not site-specific, this text amendment has been proposed with the intent to seek a conditional use permit for this use to be conducted in an existing structure located at 205 East Baltic Street (formerly His Dream Center) and situated within the C-2 Zoning District. Should the amendment be approved, the Conditional Use would be expected to come before the Planning Board for review and recommendation in July.

The "Real Estate Rental Management Facility" use was first established as a use permitted by-right within the C-3, Commercial Services Zoning District, in December 2006. At that time, a definition was established along with parking standards, and buffering requirements.

Ms. Wyatt reviewed for the Board the definition of "Real Estate Rental Management Facility" as well as the existing parking standard for this use.

Ms. Wyatt noted that when originally adopted into the code, the use of Real Estate Rental Management Facility was determined to be a "High Impact Use". High impact uses are particular uses of land, which considered as a whole because of their peculiar or operational and physical characteristics are expected to have an adverse effect on adjoining or adjacent properties.

The intent of the C-3, Commercial Services Zoning District, is to provide standards for higher intensity land uses that are not compatible in other areas of the Town. The commercial services district accommodates utilities, light industrial uses, warehousing, bulk storage, municipal facilities, studios (dance, martial arts, etc.), and commercial service buildings (20,000 square feet or less). It is also the intent of the C-3 District to regulate and buffer such uses so that their location will not be detrimental to adjacent uses, the environment, and sources of potable water.

The intent of the C-2, General Commercial Zoning District, where this use is being proposed as a conditional use, is to foster a thriving commercial business community with a variety of uses, activities and scales. This district represents areas that are anticipated to have future concentrations of uses that serve as destinations or hubs of activity for the Town and are appropriate for shopping centers or larger footprint retail stores.

The applicant, recognizing the different intents of the two districts, as well as their locations within the Town, suggested that this amendment be taken under consideration as a conditional use versus a permitted use, so as to provide the Planning Board and Board of Commissioners an opportunity to consider the placement of appropriate standards upon the use. The applicant has also provided a detailed outline of the requested text amendment including what is considered to be similar land uses currently permitted within the C-2, Zoning District as well as possible site and design standards to ensure compatibility with the C-2 District and adjoining land uses.

Ms. Wyatt noted that the Town's Comprehensive Plan has policies and actions related to the proposed text amendment and stated that those were included in her staff report.

In review of this text amendment application Staff would submit that while this use is compatible with the intent outlined for the C-3 Commercial Services, it is likely not compatible with the intent of the C-2, Commercial Services District. Additionally, Staff is of the opinion that the allowance of this use within the C-2 zoning district would be inconsistent with applicable policies contained in the Comprehensive Plan. Therefore, Staff recommends denial of the text amendment as proposed.

Ms. Wyatt noted that if the Planning Board was inclined to recommend adoption of the text amendment, Staff would recommend consideration be given to incorporating the suggested standards and criteria for this use within the C-2 zoning district. Ms. Wyatt reviewed these criteria for the Board.

Ms. Wyatt stated that she, as well as the architect, Mark Kasten and the applicant, Sumit Gupta were present and available to answer any questions for the Board.

Ms. Wyatt confirmed for Mr. Ferguson that there is currently only one of these types of uses within the Town and that one is located on Satterfield Landing in the C-3 zoning district.

Mr. Ferguson noted that while it would be nice to find a use for the proposed location (formerly His Dream Center) he wondered if there was vacant land currently available within the C-3 District that the applicant could use. Ms. Wyatt noted that there may be some vacant warehouse space and Mr. Zehner noted that at first glance there appeared to be one parcel that is currently undeveloped.

Chair Vaughan inquired as to the current use of the building. Ms. Wyatt stated that currently the building is being used as a Real Estate Rental Management Facility.

Mr. Zehner noted that staff is in the process of working with the property owner to resolve some issues and stated that this proposed amendment is a step in that process. The owner is fully aware

that there is a need to resolve several zoning, building and fire code issues with the use of the building currently.

Mr. Zehner reiterated that while this application relates to the use of that building, it should stand on its own as a text amendment and is not site-specific.

Mr. Gwinn inquired as to why Real Estate Management Facility was deemed to be a better fit for the C-3 Zoning District rather than the C-2. What made it more compatible?

Ms. Wyatt explained that based upon the warehouse storage nature of the use it met the intent of the C-3 District. The use was initially proposed by a property owner, it was not something initiated by the Town, but at that time it seemed to meet the intent of, and appropriate for the C-3, Commercial Services District.

Mr. Gwinn asked what about the use made it high impact. Ms. Wyatt explained that the use was deemed to be potentially disruptive to surrounding properties, such as the potential for large vehicles dropping things off and picking things up. There is a potential for significant activity happening in and out of a building.

Applicant Sumit Gupta of Legacy Home Services Inc. addressed the Board and thanked them for their consideration of his proposal.

Mr. Gupta explained that when they first bought the building their initial intent was to turn it into some type of performing arts center as it is close to Gallery Row. Mr. Gupta is a developer and he thought it might be a great activity for locals and tourists. Mr. Gupta felt that it was a great facility and the building had a lot of history. He met with the Town as well as several local organizations including the Dare County Arts Council and local theater groups but was unable to find a feasible economic model that worked. He told his partners that it was a good piece of property and they could either find another use for the building or they could re-develop it.

Mr. Gupta really does not want to redevelop the property or demo the building. He has a construction company and rental cottages. They have grown the maintenance side of their business and have a few people working out of the building. These same employees have been maintaining the building and cleaning up around it. The building is in pretty good shape and they want to make sure it's kept that way. Mr. Gupta stated that is a large (17,000 SF) building and they have different uses for it but they don't need a lot of employees working out of the building. They plan to store some building materials and accept some deliveries.

Mr. Gupta has not had any neighbors complaining; rather several neighbors have come over to thank them for keeping up the building and maintaining it.

Mr. Gupta understands that the amendment can't be site-specific, that is why he worked with his architect to add language to try to limit the number of properties that might be affected and still allows him to have some basic use of the property.

Mr. Gupta noted that there are a lot of uses in the C-2 which he believes to be higher impact, including the Performing Arts Center he was initially considering.

Mr. Gupta is trying to get some use out of the building and hoping that in a few years he is able to come up with another use to keep the building as is.

Mark Kasten was next to address the Board and delved further into the definition of Rental Management Facility and why they feel that that it would be compatible with other uses currently allowed in the C-2 District.

Mr. Kasten noted that Real Estate Management occurs during normal business hours. There are not any activities early or later, which would be bothersome to the neighbors. There are also not any processes which take place inside or outside of the building, which would be bothersome to neighbors. Nothing occurs that produces odors. There are no noise producing operations, nor fabricating or manufacturing of any kind. The activities which do occur are the arrival and departure of employees at normal business times (the parking standard envisions very few employees and this is true to the applicant); the arrival and departure of service personnel or vendors throughout the day; receiving shipments of furniture and appliances, fixtures and finished materials like rolled carpet or paint.

Mr. Kasten does not believe that this use would be equal or higher intensity than other uses currently permitted in the C-2 District such as restaurants, grocery stores, convenience stores, auto repair shops and car washes. All of those uses generate more traffic, more noise and more impact than a real estate management business.

Mr. Kasten believes that the use is also consistent with land use policies which encourage uses that serve the needs of both year-round and seasonal residents. Mr. Kasten stated that the community was built on tourism and weekly cottage rentals which a real estate management uses supports.

In addition, Mr. Kasten stated that the land use policies discourage high intensity land uses that produce significant noise, light and heavy vehicular traffic, noxious fumes or poor air quality or encourage unsafe behavior or require large amounts of land for heavy industrial uses. Mr. Kasten noted that the proposed use does none of these things and further stated that there are actually already permitted uses that produce more heavy traffic.

Mr. Kasten pointed out that there are already uses in the C-3 that are permitted in other parts of the town so the presence of the use in C-3 is not an automatic prohibition in C-2.

Mr. Kasten further noted that land use policies encourage the development and promotion of a sustainable economy that supports a high quality of life for residents and visitors. The applicants believe that this use supports the economy and do not see how it would compromise natural and cultural resources.

Finally, Mr. Kasten noted that the land use policies encourage the reuse of existing structure and they believe the Town would benefit from the preservation of the building for some future higher and better use. The applicant had considered an arts facility as previously mentioned but so far has not been able to make it viable. Until another, better use comes along, a real estate rental management facility would work with minimal intervention.

Mr. Kasten stated that the applicant is amenable to all the standards and criteria suggested by Staff to ensure the low impact of this proposed use and asked that the Board approval their request.

Mr. Gupta confirmed for Mr. Gwinn that currently they have furniture stored there and some left over construction material such as doors and windows. It is used for temporary storage, so items come and go. While he couldn't speak to any increase fire hazard, he did note that there are less items there that were there being stored by the previous tenant.

Mr. Kasten noted that he did not feel that anything stored there would be any more of a fire hazard than anything else allowed in the C-2 District.

Mr. Zehner added that while this use was not site-specific, he reminded the Board that any use would be subject to review under building and fire codes.

Ms. Wyatt confirmed for Ms. Harrison that the C-2 encompasses the majority of properties between the highways and throughout town it goes through Whalebone and crosses over the Causeway. It is a pretty significant area. Mr. Zehner presented the zoning map so that the Board members could get an idea of the size of the district.

Ms. Wyatt confirmed that the Board of Adjustment cannot issue variances related to uses, only on dimensional requirements such as lot coverage and setbacks.

Mr. Gupta confirmed for Chair Vaughan that until recently a lot of their maintenance had been outsourced. They run a management company and have started hiring employees to handle their maintenance needs partly with the idea of justifying the building, but it made sense both ways. They were also storing furniture and materials across the bridge in Currituck, but it made more sense to store them closer. Mr. Gupta also noted that it made sense to have people working in the building that could also maintain it and keep an eye on it.

Mr. Gupta confirmed for Mr. Gwinn that this use would support their rental management business and noted that their rental houses are spread out throughout the Outer Banks with about 15 or 18 houses in Nags Head. Mr. Gupta believes Nags Head to be a good central point to service all his properties.

Mr. Gupta confirmed for Ms. Lambert that there might be an uptick in operations as they grow that side of the business; maybe an increase in staff but it is a very large building that can accommodate the maintenance operations of their business.

Ms. Lambert expressed concern that while the neighboring properties may be ok now, things might change as the business grows.

Ms. Harrison agreed stating they would be affecting a lot of properties with this decision; if it was just the one specific property and this one company which seems well run that would be great, but they are talking about a lot of properties and a lot of potential businesses doing similar things within the same parameters.

Mr. Gupta noted that he understood Ms. Harrison's point and stated they would be open to any further restrictions or conditions that could minimize the impacts town wide. Mr. Gupta also reminded the Board that they are proposing this to be a conditional use so it would need Board approval.

Mr. Zehner confirmed for the Board that the applicants had filed a conditional use permit application that is contingent on the text amendment being adopted.

Mr. Zehner explained that the conditional use process allows the Board to gauge the impacts of a particular use based on its location and put additional conditions that they may want to impose.

Mr. Ferguson stated that he had looked at the only other rental management business in the Town and believes the use to be light industrial. The applicants confirmed that they would be using the building for warehousing which he does not believe to be compatible with the other uses currently allowed in the C-2 District. Even if it was through the conditional use process, Mr. Ferguson does not believe that it would meet the condition of not having a detrimental effect on the adjacent property owner's land values. For those reasons, Mr. Ferguson would not support approving the text amendment and believes the use should stay in the C-3 District.

Mr. Ferguson further stated that while the use is a great fit for the building it's just in the wrong location.

Chair Vaughan agreed with Mr. Ferguson, noting that while it is a good building, and appreciates the applicant's interest in preserving it, she would not want to see the use all over the C-2 District.

Mr. Gwinn agreed as well noting that his concern is that it's not limited to the current activities and so there may be some additional activities that would occur down the road as needed if this were to be approved. While he understands the applicant's rationale behind using a building that they bought and that may be consistent with their business progression, Mr. Gwinn does not believe that it would enhance or benefit the community around it and might actually have a negative impact on surrounding property values.

After a brief discussion about legacy buildings and how this property was a good example of what might be considered a legacy building Mead Gwinn moved to recommend denial of the text amendment as presented. Gary Ferguson seconded the motion and the motion passed unanimously by roll call vote.

Report on Board of Commissioners Actions

Planning Director Michael Zehner gave a report on the Actions from the Board of Commissioner's June 3rd Meeting. Of note, the Board adopted the ordinance amendment to allow "Tutoring Facility/Learning Center" as a permitted use within the C-2 District as presented. The Board also adopted the proposed amendment to the UDO pertaining to temporary uses or temporary alteration of uses related to declared emergencies presented; in addition, the Board waived associated fees for the next 45 days. The Board modified the Flood Damage Prevention Ordinance by removing the 25% recommended limit on lateral additions. The Board then adopted the Flood Damage Prevention Ordinance with the Local Elevation Standard (LES) modified from 10' to 9' for areas west of NC 12 and SR 1243. Mr. Zehner also noted that there was discussion about the Town's recycling program and based on the Planning Board's previous discussion he had sent out a request for volunteers for a committee that will be working on recycling within the town.

Town Updates

None

Discussion Items

Chair Vaughan and the Board briefly discussed the possibility of meeting in person at their next meeting and agreed that the Zoom platform is cumbersome and slow when it comes to the discussion items and tends to lengthen the meeting times. The Board agreed to play it by ear based on the latest virus information but will try to aim to meet in person for their July meeting.

The Board also agreed to hear the next Discussion Item related to the Hazard Mitigation Plan as it is time sensitive, but then discuss whether to table some of the other discussion items.

Discuss and Consider Recommendation on Hazard Mitigation Plan

Principal Planner Holly White explained that Dare and Currituck Counties, and the towns of Manteo, Nags Head, Kitty Hawk, Kill Devil Hills, Southern Shores, and Duck, joined efforts on updating their Hazard Mitigation Plans. This effort has been referred to as the *Outer Banks Regional Hazard*

Mitigation Plan. The Town's previous Hazard Mitigation Plan which was part of the *Albemarle Regional Hazard Mitigation Plan* ("Albemarle RHMP") will expire in June 2020.

While good practice, especially given the Town's susceptibility to hazards, local governments are required to prepare and update hazard mitigation plans in order to be eligible for FEMA Disaster Assistance and Mitigation Grants. Ms. White explained that the Hazard Mitigation Plan is also an important component of the Town's participation in the Community Rating System ("CRS") program. Through participation in the CRS program, all Town property owners receive a 20% discount on flood insurance.

While Dare County has acted as the lead in this process, Planning Staff has been responsible for reviewing and providing feedback on the draft Plan, as well as vetting any information that was needed specifically for the Town.

A Planning Team was developed to assist in gaining community feedback and participation as well as meet the criteria of the CRS program for Hazard Mitigation Plans. Nags Head's team members included staff members as well as two citizen representatives, Meade Gwinn and Megan Lambert.

Ms. White noted that the draft Hazard Mitigation Plan was made available to the public in January 2020 for feedback and was shared with the Planning Board. Following this, a final draft plan was produced and sent to the State for review. After review by the State, the draft plan was submitted to FEMA for review.

FEMA approved the *Outer Banks Regional Hazard Mitigation Plan* as of June 10, 2020. Formal notification from FEMA will be sent upon approval of the plan by all the jurisdictions involved. A draft resolution of adoption was forwarded to the Planning Board as part of the Staff memorandum.

Staff would recommend that Planning Board recommend adoption of the *Outer Banks Regional Hazard Mitigation Plan* to the Board of Commissioners.

Ms. White confirmed for Mr. Ferguson that currently the Town holds a CRS rating of 6, with a score of one (1) being the best.

Mr. Gwinn inquired how Nags Head's rating compared to other localities. Ms. White stated she believes that city of Charlotte has a rating of 5, which is the lowest in the state. Ms. White stated she would email the Planning Board if they wanted to know more about the rating.

Ms. White confirmed for Mr. Ferguson that the Town is still participating in the building code effectiveness grading schedule.

Mr. Zehner stated that a few months prior he had shared the latest report as part of his Director's Report and stated that the Town had scored higher than other municipalities, not just on the Outer Banks, but higher than the average for the entire state. Mr. Zehner explained that these scores relate back to the CRS rating.

Chair Vaughan thanked Ms. White and the rest of the team for their work on this project. Chair Vaughan then moved to recommend approval of the plan as presented. Mr. Ferguson seconded the motion and it passed unanimously via roll call vote.

Continued Discussion of Regulation of Events within Residential Dwelling Units

Mr. Zehner briefly reviewed this item for the Board noting that staff did not believe that there to be any benefit to considering it further during the middle of the. If it's something that the Board would like to pursue it may make sense (given the delays they've had) to just wait until sometime in September or October to revisit the item.

After a brief discussion the Board agreed to table the item noting that there will probably be limited events due to the pandemic. The Board can revisit at a later date and have something in place prior to the 2021 season.

Continued Discussion of Large Occupancy Homes

Mr. Zehner briefly reviewed this item noting that this discussion was generated by what the Town of Kill Devil Hills was doing. Mr. Zehner thought that Ms. Wyatt had done a great job of explaining in her staff report why what they (KDH) are doing is not necessarily an apples to apples comparison. Staff is of the opinion that what the Town of Nags Head currently has in place already affords the protections that they (KDH) were looking to institute. Staff's recommendation is that no further action be taken. Mr. Zehner also suggested that if there was further interest, the Board could look to program it into the Work Plan, whether that's in the next fiscal year or the one to follow.

After a brief discussion the Board agreed that no further action was necessary. Mr. Zehner will report this back to the Commissioners.

Continued Discussion of Residential Stormwater Regulations

Mr. Zehner briefly introduced the item and stated that Engineering Technician Kate Jones was also present to answer any questions for the Board. Ms. Jones manages the administration of the Residential Stormwater Ordinance. Ms. Jones is aware of the ongoing conversations and has heard some of the same concerns.

Mr. Zehner explained that the Board had asked Staff to focus on educational opportunities, other resource opportunities as well as incentives. Staff also received additional feedback from the Board of Commissioners at their last workshop. Based on this feedback Staff came up with recommendations that they could institute, and which were detailed in their staff report. Staff also provided the Board with a list of projects permitted under the Ordinance so that the Board could see examples of the results of the regulations.

Chair Vaughan noted what immediately came to her attention as she was doing her site visits was the amount of fill placed on the properties.

Ms. Jones confirmed that part of that is the Dare County Environmental Health Septic Requirements which is often a starting place for the amount of fill placed on a lot.

Ms. Jones reminded the Board that fill is no longer a trigger for the stormwater regulations. Ms. Jones noted that (non septic) fill is also partly regulated by the Flood Ordinance.

Chair Vaughan stated that when there is so much fill it is hard to imagine that the control measures can be effective. Chair Vaughan wondered if there could be incentives to control the amount of fill on a lot.

Ms. Lambert agreed, noting that anything that could be done to minimize fill would help with flooding. She is in an older property herself, one that floods easily due to newer properties being

built up higher than hers was. Ms. Lambert noted that many "legacy" properties have the same flooding concerns.

Ms. Jones confirmed that the concern that had been brought up about the rip rap/stone that was put in place had nothing to do with the Town's Stormwater Regulations which do not include town right-of-ways. That stone was placed to stabilize the area around culverts (which run underneath the driveway), when water is running out of the pipe. Ms. Jones did note that sometimes stone may be used to keep water from running down a driveway, but it is just one of several control measures.

Chair Vaughan liked the idea of focusing on education and especially using live examples. She also noted that she thought it was early in the ordinance to go trying to "reinvent the wheel".

Chair Vaughan inquired if Staff had heard concerns that the requirements are onerous, expensive and time consuming.

Ms. Jones stated that it depends; the majority of people understand the need for it and are willing to do it. Ms. Jones agreed that cost can be a factor which is why financial incentives are part of Staff's recommendations.

Staff noted, and Chair Vaughan agreed that you don't hear concerns from the ones where the measures are working. Staff agreed that maybe having testimonials from people that went through it where the measures are working could be part of the education piece.

Ms. Lambert agreed noting that she remembered comments from the public who stated that while it was a lot of work, they would gladly go through the process again for the same positive outcome.

Chair Vaughan noted that while it may be a lot of work, the public should be made aware that staff is available to help them through the process.

Mr. Zehner noted that some of the concerns rise from the unpredictability of the process, some people are not familiar with this and don't know what to expect in terms of time and cost. As part of their recommendations Staff is suggesting making options more regular and predictable across properties. Staff also discussed the state standard that the Town uses for calculations and while it's important, they could make that a little simpler for the user.

Mr. Gwinn stated that education is critical both to the contractors prior to a lot being developed and then for property owners after a lot has been developed.

Ms. Jones agreed noting that Staff's recommendations break it up between pre and post development and emphasize low impact development.

The Board agreed that education, incentives, common sense (such as looking at each lot individually) and adding flexibility to the ordinance where it is warranted were key points and in general were supportive of staff's recommended actions and activities.

Continued Discussion of Legacy Establishments/Structures

Mr. Zehner reminded the Board that this issue is less pressing than it was previously. Mr. Zehner stated that at the last meeting, Mr. Ferguson brought up a good point about nonconformities. This encouraged staff to think about it in a different way and determine that having an overlay district is probably more complicated that it needs to be.

Instead, staff has revisited a use-based approach similar to the treatment of nonconforming cottage courts. Regulations could be developed for the treatment of specific nonconforming uses (i.e. retail,

restaurants, hotels, etc.) 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.

Staff does not think it's the end all, be all in terms of protecting legacy structures, or even legacy uses because it really focuses on the nonconforming nature of a use and how limiting existing regulations are on nonconforming uses. Mr. Zehner also pointed out that not every legacy business is going to be a nonconforming use and not every nonconforming use is going to be a legacy establishment.

Staff is suggesting that the initial threshold would be a retail, restaurant, or hotel that was nonconforming and commenced prior to 1981. Mr. Zehner noted that while it is not necessarily an arbitrary threshold, it may not be inclusive of all of the establishments, and as such staff would like to identify all of the instances where they think this would apply.

Mr. Zehner explained they could create a mechanism so that if you have a nonconforming use you can seek a conditional use permit to modify that use in ways that you cannot currently because of the applicable provisions in the code. Mr. Zehner noted that currently, if you have a nonconforming use and it's in a nonconforming structure, you're limited even further in terms of what you can do and what type of repairs you can make to that structure.

Mr. Zehner pointed out that there are oceanfront hotels that have been there for years, that are a nonconforming use. Some of the structures may be conforming, some of the structures may be nonconforming. Under this provision they would have the ability to seek a conditional use permit to evolve that use where they couldn't do that today.

Staff believes this might be an easy way to address the issue and if this is something the board sees merit in staff can come back at the next meeting with an official text amendment to enact something like this and then the Board can decide if they want to recommend that to the Board of Commissioners.

Mr. Ferguson would like Staff to try to identify how many legacy structures are in Town and where they are located.

Mr. Gwinn asked if Staff could also try to identify nonconforming uses and where are they in the Town.

After some further discussion, staff agreed to compile a list of properties where this might apply to.

Planning Board Members' Agenda

None

Planning Board Chairman's Agenda

None

Adjournment

A motion to adjourn was made by Molly Harrison. The time was 12:02 PM.

Respectfully submitted,

Lily Campos Nieberding