



**AN ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE
OF THE TOWN OF NAGS HEAD, NORTH CAROLINA AS IT PERTAINS TO
TREE PRESERVATION AND REMOVAL**

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160D-701, the Town of Nags Head (the "Town") may enact and amend ordinances regulating the zoning and development of land within its jurisdiction and specifically the location and use of buildings, structures and land; pursuant to this authority and the additional authority granted by N.C.G.S. Chap. 160D-702, the Town has adopted comprehensive zoning regulations and has codified the same within the Unified Development Ordinance, Part II of the Town Code, adopted pursuant to N.C.G.S. § 160D-103, which allows the Town to combine certain land development ordinances into a unified ordinance; and

WHEREAS, the Board of Commissioners directed staff to clarify through text amendments and consolidate the existing tree preservation regulations into an Appendix.

WHEREAS, the Board of Commissioners finds that these text amendments are consistent with the goals, objectives and policies of the Town's adopted Comprehensive Plan, and that this action is reasonable and in the public interest, and is in the interest of and not contrary to the public's health, safety, morals and general welfare for the Town to amend the Town's Unified Development Ordinance 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 ellipsis ("...") shall remain as they currently exist within the Town Code.

ARTICLE III. Amendment of the Unified Development Ordinance.

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

PART I. The Charter

Chapter 26 – Offenses and Miscellaneous Provisions

Section 26-9., Official Town Tree

- (a) *Established.* The official town tree is the live oak (*Quercus virginiana*).
- (b) *Removal or destruction.* The removal or destruction of any live oak with a ~~minimum height of three feet or one inch in diameter measured at one-half foot above the grade,~~ diameter at breast height (DBH) of 2" or more within any residential district (~~R-1, R-2, R-3, SPD-20, SED-80, SPD-C~~), shall be prohibited except as allowed in subsection (c) of this section.
- (c) *Removal where permitted during active construction activities.* In any district outlined in subsection (b) of this section, live oaks may be removed only within the footprint of the principal building, required accessways, parking areas, utility installation sites, active septic areas, and accessory buildings. If a zoning district contains more restrictive rules as pertaining to tree removal, then those rules take precedence.
- (d) *Tree damage and replacement.* Any tree not authorized to be removed by this section, which is damaged during construction, or damaged occurring as a result of such construction, shall be evaluated by town planning staff and/or by a certified arborist whose services are to be procured by the applicant. ~~dressed and patched according to accepted~~

~~arboriculture and silviculture practices. Tree damage shall be repaired. If tree repair is possible as determined by planning department staff and/or a certified arborist, the applicant shall repair the tree as designated prior to the issuance of a certificate of occupancy. Any tree which is protected by this section which is destroyed shall be replaced with a similar size tree prior to the issuance of a certificate of occupancy.~~

- (e) Tree removal and replacement. Any Live oak tree protected by this section which is destroyed shall be replaced as designated in Table A prior to the issuance of a certificate of occupancy if associated with an active building or land disturbance permit. If tree removal is not associated with an active building or land disturbance permit, the applicant may satisfy the provisions of this article by (i) planting a replacement Live Oak tree or other approved native tree or trees onsite as designated by Table A or (ii) paying to the Town, at the time of violation of this article, for the destruction of each protected tree, a sum equal to five hundred dollars (\$500.00) per protected tree destroyed or damaged on the subject property or site.
- (f) Removal due to Disease or Death. The removal or destruction of any Live oak tree in any district outlined in subsection (b) of this section, may be removed if designated diseased or dead by a certified arborist, or by reasonable judgement of planning staff. It is the responsibility of the applicant to demonstrate the condition of the tree, and provide the arborist report, if required.
- (g) Removal due to Hazard. A hazard tree is likely to fall and injure persons or property as evidenced by cracking, splitting, leaning or physical damage. A hazard tree may also include a tree that is causing damage to existing public services or facilities, and such facilities or services cannot reasonably be relocated or repaired. The applicant must demonstrate that the condition or location of the tree presents a clear public safety hazard or a foreseeable danger of property damage to an existing structure or built element and such hazard or danger cannot reasonably be alleviated by treatment or pruning or moving the service or facility.
- (h) Tree topping shall be considered unauthorized removal.

(Code 1990, § 13-13)

PART II. Unified Development Ordinance

That **Article 4, Development Review Process, Part III, Section 4.9 Purpose and Intent** be amended as follows,

This section establishes the permitting process for developing one- and two-family dwellings as well as projects that complete the development review process in Part II of this Article. The permitting process involves a comprehensive review of projects for compliance with the regulations of this UDO. Projects will be reviewed for compliance with zoning, floodplain management, stormwater management, erosion and sedimentation control, as well as building code compliance. One or more permits are commonly required for most site improvements including, but not limited to, the following:

- Single-family/two-family construction - includes additions/expansions, enclosures, stairs, ramps.
- Commercial development - includes additions/expansions, storage, renovations or changes of use.
- Accessory structures - includes pool, storage buildings, gazebo, dune deck, tennis courts.
- Driveways, parking and parking additions or reconfigurations.
- Fences and pool barriers.
- Signs.
- Satellite dishes/minor communication towers.
- Bulkheads and retaining walls.
- Outdoor showers, HVAC, and pool equipment platforms.
- Improvements or modifications to buffer yards.
- Removal of trees greater than 6 inches in caliper diameter measured at breast height

(DBH).

- Land-disturbing activity including, but not limited to, clearing, grading of on-site material, grubbing of tree/shrub roots, and/or filling storing and grading imported fill material.
- Temporary uses or temporary modification of uses.

In order for an application to be complete, the Development Permit Application may include submission of one or more of the following items:

- Dare County Health Department (Septic) Improvement Permit for projects outside of The Village at Nags Head, or letter of connection approval from Carolina Water Service Co. for projects within The Village.
- Copy of CAMA permit (if applicable).
- NFIP - V-Zone certification (if applicable).
- Written detailed description of project scope and use.
- Completed Residential Design Guidelines Point Tabulation Form (if applicable).
- Survey.
- Two sets of building plans.
- Sedimentation and erosion control for disturbance >5,000 square feet.
- Stormwater plans with grading and drainage (if applicable).
- Signs, including dimensioned renderings and foundation or attachment details.
- Other information as required by local ordinance, CAMA, or State codes.

A description of the permit application and procedural requirements is provided in the Town's Reference Manual. 2019 Edition, for Development Permit Applications.

(Ord. No. 20-06-007 , Art. III, Pt. V, 6-3-2020; Ord. No. 21-06-012 , Art. III, Pt. V(Att. E), 6-2-2021)

That Article 8 – District Development Standards, Section 8.4.2 SPD -20 Special Planned Development District be amended as follows,

8.4.2.1. Intent. The SPD-20 special planned development district is created to permit development that is compatible with the environmentally sensitive nature of the unique coastal landforms contained in this district. The largest portion of this district contains Jockey's Ridge State Park which has been designated by the North Carolina Coastal Resources Commission as a unique coastal geologic formation area of environmental concern (AEC) and as a National Natural Landmark by the United States Department of the Interior. Jockey's Ridge is an example of a médano or a huge hill of shifting sand that lacks vegetation. While there are several examples of this type of sand dune in the area, Jockey's Ridge is the largest and most spectacular. In addition to the dune system, the park also contains two other important ecosystems in the Town: the maritime thicket and Roanoke Sound. Additionally, the northwestern portion of the district borders on Nags Head Woods, a maritime forest. This SPD-20 district is characterized by unique topographical and vegetative features including vegetated and unvegetated dunes, migrating sand dunes, as well as a pine forest. Specifically, the intent of this section is designed to:

8.4.2.1.1. Preserve the natural features and visual attractiveness of the area. Such features include both vegetated and unvegetated dunes, and forested areas.

8.4.2.1.2. Preserve vegetation acting as soil stabilizers or which provide wind or salt mist intrusion protection value, including the dune ridge plant communities and forested areas.

8.4.2.1.3. Promote low-density residential development and residential uses in a manner that protects and preserves natural topography and vegetation.

8.4.2.1.4. Prohibit commercial and industrial uses of the land and any other use not compatible with the ecological carrying capacity of the area, and the residential and recreational uses of the area.

8.4.2.2. Site Design Standards. The following design criteria shall be satisfied in order to protect the unique natural features and vegetation in the SPD-20 district:

8.4.2.2.1. Land disturbing activity and the removal of trees greater than four (4) inches

in diameter at breast height (DBH) measured at one foot above the ground shall be limited to the following areas:

- 8.4.2.2.1.1.** Within the proposed building footprint, including decks and a twenty ten- foot perimeter around the principal building and its accessory buildings;
- 8.4.2.2.1.2.** Within vehicular accessways;
- 8.4.2.2.1.3.** Within the septic tank drainfield and an area around such field as determined by Dare County Health Department as to ensure proper functioning of the septic system; and
- 8.4.2.2.1.4.** Within areas where land disturbing activities have created slopes in excess of three to one, the finished topography shall be aligned with and graded to existing neighboring dunes in such a manner as to minimize erosion.
- 8.4.2.2.2.** The use of bulkheads shall be limited to vehicular accessways, decorative landscaping and estuarine bulkheads only.
- 8.4.2.2.3.** A land disturbance or building permit shall be required prior to any building site preparation.
- 8.4.2.2.4.** Prior to any tree removal or earth disturbing activity, the perimeter of all proposed structures, accessways, and drainfield areas shall be staked on the lot and inspected by the UDO Administrator.
- 8.4.2.2.5.** The planning and development department may approve the removal of any tree which:
 - 8.4.2.2.5.1.** ~~Poses a safety hazard to pedestrians or vehicular traffic or threatens to cause disruption of public service;~~ Is hazardous meaning likely to fall and injure persons or private property as evidenced by cracking, splitting, leaning or physical damage.
 - 8.4.2.2.5.2.** ~~Poses a safety hazard to a building~~ Is hazardous to public facilities or services as evidenced by cracking, splitting, leaning or physical damage.
 - 8.4.2.2.5.3.** ~~Is diseased or dead or weakened by age, so as to pose a safety hazard;~~ meaning that the tree is in progressive and irreversible decline due to the presence of disease or is considered to be no longer living. The Town may require the applicant to submit a report from a certified arborist substantiating that the tree is dead or diseased to the point it is in progressive and irreversible decline.
 - 8.4.2.2.5.4** Tree topping shall be considered tree removal.

8.4.3. SED-80 Special Environmental District.

8.4.3.1. Purpose. The Nags Head Woods is an irreplaceable maritime forest occupying the northwest corner of the Town and was the home of the first settlers. Nags Head Woods is one of a few remaining maritime forests in North Carolina and on the eastern US coast. It consists of ecologically important brackish marshlands, pine hammocks, bay forest, the ridge forest, hardwood and pine forests, interdunal ponds and dunes. Additionally, Nags Head Woods is home to more than 550 species of plants, including eight species that are considered rare in North Carolina. More than 100 species of birds, 65 species of land vertebrates, and six species of freshwater fish inhabit the various ecosystems within the ecological preserve. Each part of this natural system is important to the survival of the whole system. The least adverse environmental impacts would result from development in the bay and hardwood forests and away from the ponds and marshes. The Woods is also environmentally significant because of its natural role in the integrity of the coastal region. In 1974, Nags Head Woods was designated by the United States Congress as a National Natural Landmark.

8.4.3.2. Intent. This SED-80 district is created to permit development that is compatible with the environmentally sensitive nature of Nags Head Woods and to preserve land in a natural state where such land is considered to be a vital link in the groundwater replenishment cycle of the Outer Banks and where the destruction of natural vegetation would have a harmful effect on the stability of the soil and its resistance to erosion. More specifically, the SED-80 district is designed to:

- 8.4.3.2.1.** Provide for the paramount public concern for these natural resources in the interest of health, safety and general welfare of the residents of and visitors to the Town.
- 8.4.3.2.2.** Preserve the natural features and functions of the area necessary for safe and compatible development on the entire Outer Banks. Such features include, but are not limited to, the following:
 - 8.4.3.2.2.1.** The components of the groundwater storage and recharge system which are necessary for the growth and maintenance of the maritime forest vegetation. Such components include ponds, lowlands, marshes, bay forests, and wetlands.
 - 8.4.3.2.2.2.** Vegetation acting as soil stabilizers or which provide significant protection from storm or salt intrusion, including the dune ridge plant communities and scrub forest.
- 8.4.3.2.3.** Protect the fragile ecosystems of Nags Head Woods from the effects of fire, storms,

flooding and other natural and manmade disasters.

8.4.3.2.4. Prevent pollution of the estuary and the sound which might otherwise adversely affect the biological productivity of the sound.

8.4.3.2.5. Permit low-density residential development of those portions of the SED-80 district suitable for residential use and to encourage open space and limited passive recreational use of portions not suitable for residential use.

8.4.3.2.6. Prohibit commercial and industrial use of the land except as provided in this section.

8.4.3.2.7. Preserve the cultural heritage, features, and integrity of Nags Head Woods as a maritime forest.

8.4.3.3. *Additional Requirements.* In addition to the dimensional requirements listed in 8.4.1., within the SED-80 district, the following additional requirements shall be in effect.

8.4.3.3.1. No structure or parking lot shall be located closer than fifty (50) feet to any pond, stream, marsh, or other wetlands or wetland swales.

8.4.3.3.2. No structure or parking lot shall be located closer than one hundred thirty (130) feet of the eastern boundary of the ridge line forest, and no removal of vegetation shall be permitted within one hundred (100) feet of the eastern boundary of the ridge line forest.

8.4.3.3.3. Principal and accessory structures shall meet all requirements of subsection 8.4.3.4.2.

8.4.3.3.4. In the case of lots abutting estuarine waters (as defined by the Division of Marine Fisheries and used by CAMA), lot coverage shall be in accordance with the standards listed in subsection 8.4.1, except that in the area waterward of the US Army Corps of Engineers 404 fill line, lot coverage shall not exceed 15%. If the Corps of Engineers 404 fill line is not evident or located within the estuarine AEC, as defined by CAMA, lot coverage within the estuarine AEC shall not exceed 15%. Lot coverage allowances shall not be transferred from one portion of the lot to another. The area necessary for shared accessways in accordance with subsection 8.6.6.7.1 of this UDO shall be excluded from the total lot coverage allowance for an individual lot.

8.4.3.3.5. In those instances where a Roanoke Sound dune ridge is not evident, no principal structure may be placed closer than seventy (70) feet of the mean high-water line. In those instances where an estuarine frontal dune is not evident, no principal structure may be placed closer than fifty (50) feet of the mean high-water line.

8.4.3.3.6. The following shall apply for the following facilities so long as not adjacent to estuarine waters or located within an AEC as defined by CAMA: medical offices/nursing homes and municipally owned governmental facilities.

8.4.3.3.6.1. Dimensional requirements of subsection 8.4.1 shall apply, except that lot coverage shall not exceed twenty (20) percent of the total lot area.

8.4.3.3.6.2. In the case of lots abutting estuarine waters (as defined by the Division of Marine Fisheries and used by CAMA), or located within the estuarine AEC, as defined by CAMA, lot coverage shall not exceed fifteen (15) percent. Lot coverage allowances shall not be transferred from one portion of the lot to another.

8.4.3.3.6.3. The area necessary for shared accessways in accordance with subsection 8.6.6.7.1 of this UDO shall be excluded from the total lot coverage allowance for an individual lot.

8.4.3.4. *Special Development Standards.*

8.4.3.4.1. *Site Plan Requirements.* Development of a building site for any lawful use as authorized by this UDO shall require the submission of a site plan with proposed improvements for review and approval. This site plan shall be in addition to the requirement for a building permit.

8.4.3.4.1.1. The site plan shall be drawn to at least a one inch to 40 feet scale and include at least the following minimum requirements:

8.4.3.4.1.1.1. Existing topographical conditions of the lot showing at least two-foot contour intervals.

8.4.3.4.1.1.2. Components of the groundwater recharge system including streams, ponds, marshes, dunes and lowlands, bay forests and wetland swales.

8.4.3.4.1.1.3. Location and slope of any dunes with greater than forty (40) percent slope and height greater than eight (8) feet.

8.4.3.4.1.1.4. Direction of movement and location of any migrating dunes on or near the lot.

8.4.3.4.1.1.5. Proposed building sites.

8.4.3.4.1.1.6. All existing trees which are at least 16-inch caliper-at-one-foot

~~above the ground~~—diameter at breast height (DBH) within the proposed building site and within a 20-foot perimeter around the building site and within a five-foot perimeter around required accessways, parking areas, utility installation sites, cemeteries, hiking trails and accessory buildings.

8.4.3.4.1.1.7. Areas where trees are to be removed.

8.4.3.4.1.1.8. Specifications for the protection of existing trees during construction.

8.4.3.4.1.1.9. Grade changes or other land-disturbing activities or construction activities adjacent to trees which could adversely affect the health of the trees, with specifications on how the grade, drainage and aeration will be maintained around the trees.

8.4.3.4.1.1.10. North arrow, scale, existing rights-of-way and easements.

8.4.3.4.1.1.11. If required, an approved soil erosion and sedimentation control plan.

8.4.3.4.1.1.12. Proposed location of septic tanks and drainfields.

8.4.3.4.1.2. The proposed building site shall be staked on the lot.

8.4.3.4.1.3. All trees which are to be removed shall be clearly marked on-site with tape, paint, ribbon or other appropriate means.

8.4.3.4.2. Site Design Standards. The following design criteria shall be satisfied,

except where the Board of Commissioners finds an alternative design scheme which provides equal or better performance standards regarding the intent of this UDO and to protect the natural features of the SED-80 district protected under this section:

8.4.3.4.2.1. The filling or dredging of ponds or marshes or streams or wetland swales is prohibited unless permitted by CAMA or the Corps of Engineers.

8.4.3.4.2.2. The grading or other alteration of dunes with greater than 40 percent slope and height greater than eight feet is prohibited.

8.4.3.4.2.3. The removal of any tree with a caliper sixteen (16) inches or greater is prohibited, whether or not they fall within any building site, septic area, driveway, road or utility easement, except as provided in subsection 8.4.3.4.3.1.3 of this section.

8.4.3.4.2.4. The removal of any tree with a caliper diameter at breast height (DBH) greater than four (4) inches ~~measured at one foot above the ground~~ is prohibited except for those trees which are exempt under subsection 8.4.3.4.3.1.3 of this section, or those trees that are:

8.4.3.4.2.4.1. Within the principal building site, exclusive of decks, and within a 20-foot perimeter around the principal building.

8.4.3.4.2.4.2. Within a required accessway, parking lot, driveway, utility installation sites, cemeteries, hiking trails and accessory buildings and a five-foot perimeter around these areas.

8.4.3.4.2.4.3. Within the septic tank drainfield and an area around such field as determined by the Dare County Health Department as to ensure proper functioning of the septic system.

8.4.3.4.2.5. Trees less than four (4) inches diameter at breast height (DBH) in caliper and weeds, vines, bushes and similar ground vegetation may be removed, provided that no land disturbing activity occurs and that the leaf litter, mulch, topsoil and similar materials are left undisturbed. However, no vegetation shall be removed from the western slope of the Roanoke Sound dunes ridge or the western slope of the estuarine dune ridge.

8.4.3.4.2.6. The sewage septic tank and other utilities shall be located to the maximum extent feasible on the edges of areas that have been cleared for access and building purposes and shall satisfy the legal requirement of county, state and federal authorities.

8.4.3.4.2.7. The draw-down of groundwater, except for on-site wells designed to serve buildings on individual lots, and the alteration of natural drainage patterns are prohibited.

8.4.3.4.2.8. No building, vegetation removal or land disturbing activity shall occur on the western slope of the Roanoke Sound dune ridge. No building shall be permitted within seventy (70) feet and no vegetation shall be removed or land disturbing activity shall occur within an area fifty (50) feet easterly of the western ridge of the Roanoke Sound dune ridge. No building shall be permitted within seventy (70) feet and no vegetation shall be removed and no land-disturbing activity shall occur within fifty (50) feet westerly of the toe of the western slope of the Roanoke Sound dune ridge.

8.4.3.4.2.9. On lots which are adjacent to the Roanoke Sound and where the elevation of the estuarine frontal dunes exceeds fifteen (15) feet above mean sea

level, the topography of the dune may be altered as follows:

8.4.3.4.2.9.1. The area graded shall be of minimum size necessary for the placement of a principal structure on a building site.

8.4.3.4.2.9.2. Finished graded height of the dune shall be equal to or greater than fifteen (15) feet mean sea level.

8.4.3.4.2.9.3. Vegetation may be removed from the top and eastern slope of the dune.

8.4.3.4.2.9.4. No grade alteration, land disturbing activity, or vegetation removal will be permitted on the western slope of the dune.

8.4.3.4.2.9.5. Any sand removed shall be relocated in such a manner as not to damage existing trees greater than four (4) inches in caliper.

8.4.3.4.2.9.6. The finished topography shall be aligned with and graded with existing neighboring dunes in such a manner as to minimize erosion.

8.4.3.4.2.9.7. All principal structures shall be set back fifty (50) feet from the western toe of the estuarine frontal dunes.

8.4.3.4.2.9.8. Areas where land disturbing activity has occurred shall be stabilized with appropriate erosion control measures within thirty (30) days of the beginning of land disturbing activity.

8.4.3.4.2.9.9. All pedestrian accessways from the top of the dunes to the Sound shoreline shall be raised on pilings and shall be no more than six (6) feet wide.

8.4.3.4.2.10. All structures shall be located at least one hundred thirty (130) feet westerly of the eastern boundary of the ridge line forest vegetation. The removal of any vegetation within one hundred (100) feet westerly of the ridge line forest shall be prohibited except as provided by this UDO.

8.4.3.4.2.11. The clearing of land to provide access to the building site shall be minimized; including the clearing of the forest under story. The use of shared driveways is encouraged. Driveways shall be a maximum width of twelve (12) feet which will allow for access by one vehicle, however when serving three or more residences the driveway width may be increased up to twenty (20) feet. Driveways shall follow the natural contour lines of the land insofar as possible and shall be clay, gravel, porous asphalt or like-porous surface.

8.4.3.4.2.12. Uncovered decks may extend into the 20-foot perimeter around principal structures and to any area which does not require the removal of trees greater than four (4) inches diameter breast height (DBH) in caliper and/or any areas which do not require grade changes or land disturbing activity. Decks shall not extend beyond the point of beginning of the western slope of either the Roanoke Sound dune ridges or the estuarine frontal dunes.

8.4.3.4.2.13. The Board of Commissioners may permit the removal of vegetation and may permit land disturbing activity through the Roanoke Sound dune ridge area or the ridge line forest area as regulated in this section to allow reasonable access to a principal building site[s]. In granting such access, the Board of Commissioners may require additional environmental protection measures to secure the basis and purpose and intent of this UDO.

8.4.3.4.3. Standards of Review and Approval Procedure; Intent and Purpose. When selecting the building site, the applicant shall adhere to the following standards and to the intent and purpose of this section:

8.4.3.4.3.1. Building Site Selection. The Board of Commissioners or planning and development staff, whichever the case may be as described in subsection 8.4.3.4.3.2 of this section, shall review and may approve the proposed improvements site plan indicating the proposed building sites before a building permit can be issued. The most suitable building sites are those areas that require the absolute minimum alterations of the natural vegetation, topography and groundwater systems. Evaluation of site suitability shall use the following additional criteria:

8.4.3.4.3.1.1. Existing unforested land areas shall be considered as the most suitable building sites, unless such a selection would threaten the health of the vegetation by stimulating dune migration or cause extensive salt mist intrusion into the Woods or would involve alterations or development prohibited elsewhere in this section.

8.4.3.4.3.1.2. Where vegetation must be removed for the building sites, the most suitable sites will be the sites which disturb the minimum number of healthy trees and vegetation. In approving the building sites, the board shall consider the density, height and variety of the vegetation to be removed, so as to preserve those forest stands which provide the most protection from storm and salt spray and maintain the unique natural diversity of the plant species in the Woods.

8.4.3.4.3.1.3. The planning and development department may approve the removal of any tree which:

8.4.3.4.3.1.3.1. ~~Poses a safety hazard to pedestrians or vehicular traffic or threatens to cause disruption of public service; Is likely to fall and injure persons or private property as evidenced by cracking, splitting, leaning or physical damage.~~

8.4.3.4.3.1.3.2. ~~Poses a safety hazard to a building; or Is a threat to public facilities or services as evidenced by cracking, splitting, leaning or physical damage.~~

8.4.3.4.3.1.3.3. ~~Is diseased or weakened by age, so as to pose a safety hazard. Is in progressive and irreversible decline due to the presence of disease or is considered to be no longer living. The Town may require the applicant to submit a report from a certified arborist substantiating that the tree is dead or diseased to the point it is in progressive and irreversible decline.~~

8.4.3.4.3.1.3.4. Tree topping shall be considered tree removal.

8.4.3.4.3.1.4. The Board of Commissioners shall review and may approve the removal of any tree greater than four (4) inches diameter at breast height (DBH) ~~in caliper~~ where:

8.4.3.4.3.1.4.1. The Board of Commissioners find in their opinion no reasonable alternative building site and/or supporting facilities can be located on a lot; or

8.4.3.4.3.1.4.2. The removal is necessary to construct proposed improvements as a result of: need for access around the proposed structure for construction equipment; need for access to the building site for construction equipment; essential grade changes; surface water drainage and utility installations. However, removal of trees greater than sixteen (16) inches ~~in caliper~~ diameter at breast height (DBH) is prohibited unless subsection 8.4.3.4.3.1.3 or subsection 8.4.3.4.3.1.4 of this section apply.

8.4.3.4.3.1.5. The topography of the site shall be evaluated for overall development suitability so that all structures shall be constructed below the canopy of existing tree cover.

8.4.3.4.3.2. *Site Plan Approval Process.*

8.4.3.4.3.2.1. *Single-Family Residences.* Site plans for single-family residences shall be reviewed by the planning and development department. The planning and development department may approve site plans when the dimensional requirements and standards of this UDO are met and when no trees sixteen (16) inches diameter at breast height (DBH) or greater are requested to be removed.

8.4.3.4.3.2.2. *Other Development.* The planning and development department shall review the proposed site plan and forward the site plan to the Planning Board and Board of Commissioners for review and approval. In granting approval, the Board of Commissioners shall, in addition to this article, apply Section 3.8, Special Use Permits of this UDO and all other applicable Town codes and ordinances.

8.4.3.4.3.2.3. *Subdivisions.* Subdivisions shall be as provided for in Article 10, Part V, Subdivision Regulations of this UDO.

8.4.3.5. *Mitigation Requirements.* In order to protect and reestablish natural vegetation during and after construction, the following mitigation actions are required.

8.4.3.5.1. The approved soil erosion and sedimentation control plan shall be in effect within thirty (30) days following completion of land disturbing activity and vegetation removal. Suitable native vegetative cover shall be established within the next growing season. Prior to the issuance of any required building permit, a soil erosion and sedimentation control plan shall be approved by the Town.

8.4.3.5.2. The developer or his agent of the property for which a site plan has been approved shall notify the planning and development department before any vegetation is removed. The notification shall indicate when the vegetation will be removed, and the UDO administrator Building Inspector shall conduct the necessary inspections to ensure that the vegetation removal is in accordance with the approved soil erosion and sedimentation control plan and that the approved soil erosion and sedimentation control plan is properly in effect.

8.4.3.5.3. To eliminate pest and disease damage to vegetation, any pruning or damage done to trees during construction should be properly attended to using accepted silviculture practices.

8.4.3.5.4. Any protected tree damaged during construction, or damage occurring as a result of such construction, shall be dressed and patched according to accepted arboriculture and silviculture practices. Tree damage shall be repaired prior to the issuance of a certificate of occupancy.

8.4.3.5.5. Prior to the issuance of a certificate of occupancy for the development site, the ~~planning and development director or his designee~~ UDO administrator shall inspect the site for

the purpose of certifying compliance with the requirements of the site plan. Posting surety in lieu of actual compliance with an approved site plan may be permitted, provided that compliance with the approved site plan shall be obtained within one hundred eighty (180) days.

8.4.3.6. Enforcement. Enforcement in the SED-80 district shall be as follows:

8.4.3.6.1. Failure to comply with the requirements of the approved site plan shall be considered a violation and shall be subject to the immediate issuance of a stop work order by the UDO administrator ~~Building Inspector~~ and to the other procedures and remedies of this section, this article and this UDO which may apply.

8.4.3.6.2. Any unauthorized disturbance and/or removal of trees, shrubs, grass or other naturally occurring vegetation, as well as sand, soil, dirt or earth which has been removed, relocated, graded, excavated, added to, filled or disturbed in violation of this UDO or any applicable Town ordinance, and any naturally occurring trees, shrubbery, grass or other naturally occurring vegetation which has been killed, damaged, destroyed or removed in violation of this UDO shall be restored or replaced as per Table A. ~~within sixty (60) days of notice from the Building Inspector. All replacement trees shall be at least ten (10) feet in height or have a caliper of not less than two (2) inches. Each day after the 60 day period that the violator fails to perform such restoration or replacement shall constitute a new and separate violation.~~

8.4.3.6.3. In addition to the criminal penalties provided by this article and Section 1.10, Violation of UDO Regulations, the Town may immediately collect a \$500 fine per unauthorized tree removed and/or initiate proceedings before a court of competent jurisdiction to obtain enforcement of any provision of this article by prohibitory injunction, mandamus, affirmative injunction or order of abatement, as provided by G.S. 160A-175. Enforcement may be by one, all, or a combination of such remedies.

8.4.4. SPD-C Special Planned Development - Community District.

Refer to Article 9, SPD-C Zoning Ordinance for regulations associated with the Village at Nags Head Special Planned Development - Community District.

(Ord. No. 21-06-012 , Art. III, Pt. IX(Att. I), 6-2-2021)

PART III. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. This ordinance shall be in full force and effect from and after the 4th day of **January 2023**.



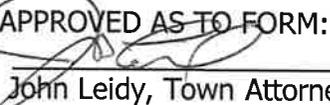
Benjamin Cahoon, Mayor
Town of Nags Head

ATTEST:



Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:



John Leidy, Town Attorney

Date adopted: January 4, 2023

Motion to adopt by Commissioner
Motion seconded by Commissioner
Vote: _____ AYES _____ NAYS

