



MEMORANDUM

Town of Nags Head

Planning & Development Department

To: Planning Board

From: Kelly Wyatt, Planning Director

Date: January 14, 2022

Subject: Consideration of a text amendment as it pertains to the application of the Regulatory Flood Protection Elevation east of NC 12 within the Village at Nags Head Special Planned Development District.

OVERVIEW AND BACKGROUND

At the Board of Commissioners January 5, 2022 meeting, Planning Staff provided an update on a recent Board of Adjustment variance hearing and the resulting determination to grant a variance from the Flood Damage Prevention Ordinance. At their December 9, 2021, meeting, the Board of Adjustment heard and granted a variance for the Jones property located at 100 E. Sandcastle Court, Nags Head. The Board of Adjustment found that the property, as well as the current property owner who is living with a disability, does suffer unnecessary hardships based upon application of the current Flood Damage Prevention Ordinance, specifically the requirements of *Section 11.44.2, Residential Construction* and *Section 11.44.3, Coastal High Hazard Areas (Zones VE) and Properties East of NC 12 and SR 1243*. These sections of the Flood Damage Prevention Ordinance require that new construction or substantial improvement of any residential structure have the reference level elevated no lower than the regulatory flood protection elevation. In establishing the local elevation standard (LES), also referred to as the regulatory flood protection elevation (RFPE), we delineated the Coastal High Hazard Areas/VE Zones as being those properties east of NC 12 (S. Virginia Dare Trail) and SR 1243 (S. Old Oregon Inlet Road). The RFPE for properties located east of NC 12 and SR 1243 is 12' msl. While the Board of Adjustment identified numerous hardships as part of their findings of fact, one notable finding pertained specifically to the location of this, and similarly situated properties, where NC 12 does not parallel the beach. As part of the road relocation many years ago, NC 12 is now substantially further west than the alignment of the remainder of the roadway in the vicinity of Sandcastle Court, Sea Spray Court, Sand Fiddler Court, Sea Holly Court, and Sun Dancer Court. If the roadway was in its original location, many of these properties would be located west of NC 12, having an RFPE of 9' msl. Included in the December 2021 Directors Report are two images outlining this area of Town as regulated by the 2006 flood maps and the same area as regulated by the current flood maps. Under the previous flood maps, this area was located within an AE 9 flood zone. Under the current flood maps, this area is not located within a flood zone however with the application of the Town's LES/RFPE, this property is regulated to VE 12' standards.

It was the consensus of the Board of Commissioners that staff move forward with the necessary text amendment to the Unified Development Ordinance to rectify this situation.

Staff has provided a draft text amendment to the Unified Development Ordinance, Appendix A – Definitions, Regulatory Flood Protection Elevation, for the Planning Boards review and consideration. Note that the revised language applies only to those properties located within the Village at Nags Head SPD-C District.

STAFF RECOMMENDATION:

Staff is of the opinion that the proposed amendment is consistent with the Town's adopted Comprehensive Plan and is reasonable and in the public interest and recommends adoption of the amendment as requested.

With regard to the Planning Board's review and action, Staff recommends consideration of the following UDO provisions:

3.5.3. Action by the Planning Board.

3.5.3.1. Every proposed amendment, UDO text amendment or zoning map amendment, shall be referred to the Planning Board for its recommendation and report. The Board of Commissioners is not bound by the recommendations, if any, of the Planning Board.

3.5.3.2. Prior to the consideration by the Board of Commissioners of a proposed UDO text amendment or zoning map amendment, the Planning Board shall advise and comment on whether the proposed amendment is consistent with the Comprehensive Plan. The Planning Board shall provide a written recommendation, certified by the UDO Administrator, to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the Comprehensive Plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners.

3.5.3.3. Members of the Planning Board shall not vote on recommendations regarding any UDO text amendment or zoning map amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

(DRAFT)
AN ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE OF THE TOWN OF NAGS HEAD, NORTH CAROLINA AS IT PERTAINS TO THE APPLICATION OF REGULATORY FLOOD PROTECTION ELEVATION (RFPE) EAST OF NC 12.

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, staff was requested by the Board of Commissioners to draft a text amendment which would rectify a concern with the application of the Town’s RFPE within the Village at Nags Head Special Planned Development District, based upon the alignment of NC 12; and

WHEREAS, the proposed text amendment is consistent with the Town of Nags Head 2017 Comprehensive Plan.

ARTICLE II. Construction.

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

ARTICLE III. Amendment of the Unified Development Ordinance.

PART I. That **Appendix A, Section A.4 – Definitions**, be amended as follows:

Regulatory flood protection elevation means the Local Elevation Standard (LES). The Local Elevation Standard is a locally adopted elevation level used as the Regulatory Flood Protection Elevation (RFPE) to mitigate flood hazards in the Shaded X, X, AE, AO, VE, as depicted on the FIRMs for Nags Head. These areas may be vulnerable to flooding from storm surge, wind-driven tides, and excessive rainfall. Many of these areas have repetitively flooded and continue to remain at risk to flooding.

Coastal High Hazard Areas (CHHA) - Properties located to the east of NC 12 and SR 1243 are located in an active oceanfront environment that is vulnerable to storm surge, erosion, sea level rise, and other hazards. These areas have special flood hazards associated with high velocity waters from storm surges or seismic activity and, therefore, the RFPE is 12 feet NAVD 1988.

Properties west of NC 12 and SR 1243 - The RFPE for properties located west of NC 12 and SR 1243 and in flood zones Shaded X, X, or AE, is 9 feet NAVD 1988. This includes properties abutting US 64, also known as the Causeway.

Within the Village of Nags Head, only parcels with direct frontage on the Atlantic Ocean/ocean beach shall be considered a Coastal High Hazard Area with an RFPE of 12.

PART II. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.
This ordinance shall be in full force and effect from and after the ____ day of ____ 2022.

Benjamin Cahoon, Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

Date adopted: _____

Motion to adopt by Commissioner _____

Motion seconded by Commissioner _____

Vote: ____ AYES ____ NAYS