



**MINUTES
TOWN OF NAGS HEAD
BOARD OF COMMISSIONERS
REGULAR MEETING
WEDNESDAY, JANUARY 8, 2020**

The Nags Head Board of Commissioners met in the Board Room of the Nags Head Municipal Complex located at 5401 S Croatan Highway in Nags Head, North Carolina on Wednesday, January 8, 2020 at 9:00 a.m.

Board members Present: Mayor Ben Cahoon; Mayor Pro Tem Michael Siers; Comr. Renée Cahoon; Comr. Webb Fuller; and Comr. Kevin Brinkley

Board members Absent: None

Others present: Town Manager Cliff Ogburn; Attorney John Leidy; Andy Garman; Phil Webster; Perry Hale; Randy Wells; Shane Hite; Chad Motz; Austin Fallon; Michael Zehner; Kelly Wyatt; Holly White; David Ryan; Amy Miller; Brie Floyd; Roberta Thuman; Lisa Ward; Teresa Osborne; Bobby Outten; Rob Ross; Paul Melnyk; Barbara Melnyk; Edie Fallon; Meredyth Fallon; Austin Fallon; Karen Novello; Mark Eagan; Richard Kittrell; Vickie Kittrell; Jason Baker; Rachel Baker; Steve Horst; Deborah Horst; Michelle Chimento; Jim Troutman; Christine Petzing; Marilyn Munden; Donald Underdonk; David Kravitz; Tom Cassidy; Theresa Cassidy; Carole Hoffman; and Town Clerk Carolyn Morris

CALL TO ORDER

Mayor Cahoon called the meeting to order at 9:00 a.m. A moment of silence was followed by the Pledge of Allegiance.

ADOPTION OF AGENDA

MOTION: Comr. Fuller made a motion to approve the January 8th agenda as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

RECOGNITION

FIVE YEARS – Planning Director Michael Zehner introduced Principal Planner Holly White who was recognized by the Board for five years of service.

PRESENTATION – Heroic Action Award – Fire Chief Randy Wells introduced Ocean Rescue Director Chad Motz who reported on this past summer's save by Lifeguard Austin Fallon. Director Motz reported that near Jennette's Pier this past summer Mr. Fallon's heroic actions saved a swimmer in what Director Motz stated was "not your average" rescue. Photos displayed on screen showed Mr.

Fallon's heroic actions. Board members thanked Lifeguard Fallon for his actions and he received a standing ovation from the audience.

RETIREMENT – Dep Police Chief Perry Hale introduced Public Safety Office/Systems Manager Lisa Ward who recently retired from the Town after 28 years of service. The Board congratulated Ms. Ward on her years of service to the Town, presented her with a plaque of appreciation, and wished her well in retirement.

PUBLIC COMMENT

Mayor Cahoon stated that there would not be a public comment period during the Coastal Villas agenda item and now would be the time to speak concerning that item if interested. Attorney Leidy conducted the Public Comment period.

PUBLIC COMMENT – JIM TROUTMAN

Jim Troutman, Southridge resident; he has no problem with the proposed Coastal Villas subdivision but does have a problem with the planned access; as proposed the access would be for those trying to get to one of 17 houses via Deering Street to Vansciver to Ridgeway to Sea Bass Court to Mariner's Way – all via right-hand turns; he feels that this doesn't make sense for emergency vehicles, etc. as it would be easier, simpler, and safer to get to this neighborhood since it is located directly adjacent to US 158, from an access off of US 158; he also concerned about speed issues in this area; he asked the Board to take this information into consideration when making a decision on this item.

All emails received by the Town from those commenting on the Coastal Villas agenda item are attached to and made a part of these minutes as shown in Addendum "A".

PUBLIC COMMENT – THERESA CASSIDY

Theresa Cassidy, Southridge resident; she spoke against the proposed access for the Coastal Villas Subdivision through the existing subdivision and indicated that she had also forwarded an email to the Board on this issue.

PUBLIC COMMENT – DOMINIC PALIDORI

Dominic Palidori, Southridge resident; he spoke against the proposed access for the Coastal Villas Subdivision; he also mentioned the disturbance to animals such as the red wolf and asked the Board to do the right thing for the animals too.

PUBLIC COMMENT – DEBORAH HORST

Deborah Horst, Nags Head resident; her issue concerned her mentally ill stepdaughter; last year police were called to their home and said that her husband was pulling his daughter out of a vehicle – Ms. Horst said that her stepdaughter was never in a vehicle; she would like to view the police videos from the Town which she says appeared to be compromised as there was no sound; her husband ended up being arrested by Nags Head Police instead of her stepdaughter; she would like to view the complete video which she is unable to get; when the numerous police officers showed up at her house it was complete chaos; she doesn't know what to do at this point which is why she is here.

PUBLIC COMMENT – RICHARD KITTRELL

Richard Kittrell, Southridge resident; spoke against the proposed access for the Coastal Villas Subdivision; he also spoke at the December 2019 Planning Board meeting; he feels that stormwater runoff will be an issue as will the increased traffic; he would like Coastal Villas to be a standalone development so it won't have to utilize the existing subdivision streets; he is concerned about the amount of traffic at Deering Street/in that subdivision especially during the summer; Concerning stormwater runoff the Planning Director told him that the elevation of the planned development will be higher in the new development and the existing infiltration basins will be flattened; he asked the Board to consider tabling this until the residents, planners, and developer can meet to have a discussion.

PUBLIC COMMENT – DAVID KRAVITZ

David Kravitz, Southridge resident; spoke against the proposed access to Coastal Villas; he has also sent an email to the Board on this issue; he spoke of the unintended consequences which he said was seen last month when Soundside Road was closed under a rush rebuild when the under-roadway pipes collapsed; in consideration of safety he feels that there should be two accesses to the new development – off of US 158.

PUBLIC COMMENT – PAUL MELNYK

Paul Melnyk, Southridge resident; he spoke against the proposed access to Coastal Villas; he has forwarded an email to Board members on this issue; he is concerned that Coastal Villas will be two feet higher than surrounding properties; he asked the Board to make sure that the stormwater drainage does not flow into the Sea Bass development.

PUBLIC COMMENT – RACHEL BAKER

Rachel Baker, Southridge resident; she spoke against the proposed access to Coastal Villas; she feels the new subdivision will mostly be for summer rentals which would increase the traffic and be a safety issue; she asked the Board to consider what will be the impacts to the year-round residents.

PUBLIC COMMENT – TOM CASSIDY

Tom Cassidy, Southridge resident; he spoke against the proposed access to Coastal Villas; a turning lane off of US 158 would be more feasible – Deering Street is similar to a "raceway" during the summer; he knows the houses are going to be constructed but asked the Board to do it the right way.

PUBLIC COMMENT - MARK EAGAN

Mark Eagan, Southridge resident; he spoke against the proposed access to Coastal Villas; he forwarded an email to the Board on this issue; he chose Southridge for the quiet neighborhood and is concerned about the change to their streets with the additional traffic; he also expressed concern about stormwater runoff; he asked the Board to review all the materials; it is a good plan but wants the Board to consider the current neighborhood.

PUBLIC COMMENT – KAREN NOVELLO

Karen Novello; Southridge resident; she spoke against the proposed access to Coastal Villas; she forwarded an email to the Board which she read.

PUBLIC COMMENT – JOE MAIONE

Joe Maione, Southridge resident; he spoke against the proposed Coastal Villas access via Deering Street; he forwarded an email to the Board on this issue; he requested that the Board provide access to the new subdivision off of US 158.

PUBLIC COMMENT – MICHELLE CHIMENTO

Michelle Chimento, Soundside Road resident; she spoke against the proposed Coastal Villas access and of the adverse impact of its development; she expressed concern that Southridge residents may utilize Soundside Road; her concern is the additional traffic on Soundside Road and the dangerous conditions it would cause that neighborhood; she also spoke about the stormwater runoff from the new development.

There being no one else present who wished to speak, Attorney Leidy concluded Public Comment at 10:06 a.m.

CONSENT AGENDA

The Consent Agenda consisted of the following items:

Consideration of Budget Adjustment #7 to FY 19/20 Budget

Consideration of Tax Adjustment Report

Approval of minutes

Modification to Town Code Chapter 44 *Utilities* re: water billing

Consideration of revised Todd D. Krafft Septic Health Policy - repair/replacement loan program

Request for Public Hearing - to consider Vested Right Site Plan for the Outer Banks Hospital, 4923 & 4927 S. Croatan Highway, 4922, 4926 & 4928 Passage Way, submitted by Quible and Associates P.C. on behalf of Outer Banks Hospital; the application involves the demolition of the Urgent Care Facility and construction of a 10,400 square foot addition (Infusion Facility) to the existing Radiation Therapy building

MOTION: Comr. Fuller made a motion to approve the Consent Agenda as presented. The motion was seconded by Comr. Renée Cahoon which passed unanimously.

Budget Adjustment #7 to the FY 19/20 Budget, as approved, is attached to and made a part of these minutes as shown in Addendum "B".

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

Modification to Town Code Chapter 44 Utilities re: water billing – the summary sheet, as approved, read in part as follows:

"Attached for Board review and adoption is a proposed ordinance amending Town Code Chapter 44 Utilities re: water billing.

"The amendment provides additional clarification for property owners to know when water bills are due and under what circumstances service will be cut off."

The ordinance, as adopted, is attached to and made a part of these minutes as shown in Addendum "D".

Revised Todd D. Krafft Septic Health Initiative Program Policy summary sheet, as approved, read in part as follows:

"Attached for Board review and approval is a revised repair/replacement loan program portion of the Todd D. Krafft Septic Health Initiative Program Policy. The revised policy adds the requirement that loans are only to be provided to homeowners who have no delinquent debts to the Town."

The policy, as approved, is attached to and made a part of these minutes as shown in Addendum "E".

The Outer Banks Hospital Cancer Center Request for Public Hearing summary sheet, as approved, read in part as follows:

"A Vested Right Site Plan, Conditional Use Permit, and Rezoning for the Outer Banks Hospital Cancer Center; the scope of the application includes the following:

- Demolition of the existing Urgent Care Facility and construction of a 10,400-sf addition to the existing Radiation Therapy building, along with parking, stormwater, and related improvements.
- A rezoning request for three (3) lots along S. Passage Way from SPD-C/SF-4 to SPD-C/Hotel.
- Consideration of reduced loading zone berth dimensions and reduction of required parking based upon Medical Office use

'Staff Recommendation/Planning Board Recommendation: Regarding the Rezoning request, staff finds the request is supported by the 2017 Comprehensive Plan as this area is located within the Village Municipal Service Character Area where "medical facilities" are considered an appropriate use; additionally, this area was originally zoned SPD-C/Hotel, but was rezoned for the purposes of developing the Moongate Subdivision. Regarding the Conditional Use/Vested Right/Site Plan Application, staff finds that the proposal is consistent with applicable use and development standards, as well as relevant land use policies; additionally, Staff finds that the reduction in parking is sufficiently supported based upon submitted technical evidence. Therefore, staff recommends approval of the proposal as presented, with conditions.

'At their December 17, 2019 meeting the Planning Board voted unanimously to recommend approval of both the Rezoning Request and Conditional Use/Vested Right/Site Plan Amendment application, with conditions, as presented."

PRESENTATIONS

Report from Auditor – Annual Report – Teresa Osborne, CPA

Town Auditor Teresa Osborne presented the Town's annual audit report. She stated that the Town received an "Unmodified Opinion" which is the best evaluation that can be received. She noted that staff goes above the requirements by preparing a Comprehensive Annual Financial Report (CAFR) and pointed out that the Town has been awarded a Certificate of Achievement for the past three years from the Financial Officers Association. Audit approval was received on January 5, 2020 and she presented some highlights:

- The General Fund is the largest fund comprising most governmental funds – the Town’s very strong Fund Balance was \$6,981,462 at the end of the fiscal year.
- Water fund – biggest expense was the South Nags Head Water Tower refurbishing project which a cost of \$250,000; also has some positive financial indicators; strong ratio of bills being paid/collected
- Town implemented one new accounting standard this year – GASB 88 – which fine-tuned disclosures for debt placement
- Ms. Osborne also mentioned the high caliber of work being done by the Town’s financial dept – converting to Munis was a big undertaking but will benefit the Town for years to come
- In response to a question from Comr. Renée Cahoon, Ms. Osborne stated that the actuarial functions investment return, noted on page 47, is for the State Retirement System.

The Board thanked Ms. Osborne for her work on the audit and thanked Town staff as well. Comr. Renée Cahoon wished Ms. Osborne well as she leaves the audit field.

Beach Nourishment Funding Update - Dare County Mgr/Attorney Bobby Outten

Dare County Manager/Attorney Bobby Outten presented a summary of the funding for the County’s Beach Nourishment Fund. He reported that Nags Head was the first to have beach nourishment – Nags Head moved forward on its own because the federal project was not coming to fruition; the County’s share of the fund comes from the occupancy tax; the 50/50 split with Nags Head and Dare County is done by balancing needs and what the Town could afford; during the Mayor lunches there are discussions on how to fund Beach Nourishment projects moving forward; also money is held for each project’s maintenance; each town is treated the same way as money is allocated from the fund – net result is towns get the same based on the value of their tax base; Funds are projected for future maintenance – they do models for the next 10 years.

He explained that the County is different than Carteret County which has a finite number of beaches which makes their planning a little easier; they do not take from the fund to pay for a project that is not ready – the County is now on Funding Model #24. He summarized that it will be a challenge down the road finding funding for new projects. Mr. Outten complimented Nags Head and spoke positively about working with the towns.

Mayor Cahoon recognized Dare County Comr. Rob Ross in the audience who is also a Town resident.

Mr. Outten said that the Fund generates about \$10 million each year; Mayor Pro Tem Siers asked about raising occupancy tax to obtain more funds; Mr. Outten said that has been tried but never approved; It was a fight to get the 2% out of the occupancy tax approved.

Comr. Renée Cahoon thanked Mr. Outten for the informative presentation; she spoke of upcoming projects south of Nags Head; Mr. Outten said that the County Board is adamant that any locality receiving funds needs to contribute to the fund. She asked Mr. Outten to let the Town know if support is needed for support in pushing forward any legislation.

Comr. Fuller expressed his appreciation for the cooperation between the County and the towns.

Mayor Cahoon thanked Mr. Outten for attending the meeting and presenting his report on the process for the County’s Beach Nourishment Fund.

PUBLIC HEARINGS

Public Hearing to consider proposed text amendments to the Unified Development Ordinance pertaining to off-street parking requirements associated with alternative and reduced parking, including bicycle parking, and associated conditional use permitting requirements

Planning Director Michael Zehner presented on screen the proposed ordinance pertaining to off-street parking requirements associated with alternative and reduced parking with several minor typographical errors corrected. He then summarized his staff report which read in part as follows:

"OVERVIEW

At the Board of Commissioners' Retreat on September 12, 2019, the Board and Staff discussed perspectives with regard to the reduction of required parking. The discussion focused on the reduction of parking based on the provision of bicycle parking, as well as the reduction of parking by Conditional Use Permit; also discussed was whether, in certain circumstances, bicycle parking should be a requirement. Following the discussion, the Board directed Staff to work with the Planning Board to consider amendments to the Unified Development Ordinance ("UDO") that 1) made the reduction of parking based on the provision of bicycle parking a Conditional Use Permit and took into consideration whether sites had access to bike-friendly routes, 2) standardized findings for all parking-related Conditional Use Permits, and 3) established minimum standards for required bicycle parking.

The Planning Board discussed this matter and considered amendments at their meetings on October 15, 2019 and November 19, 2019. At least with respect to items 1 and 2, Section 10.15, *Alternative and Reduced Commercial Parking Requirements*, provides the applicable provisions. As it pertains to item 1, currently Section 10.15.5, *Reduction of Required Parking for Commercial Uses with the Use of Bicycle Racks*, does not require a Conditional Use Permit. Given this, it could be viewed as a performance-based standard, where a reduction is entitled if the standards are met; however, the reduction is qualified in that "the Board of Commissioners may allow" the total parking requirement to be reduced.

With regard to item 2, while there are four (4) types of parking-related Conditional Use Permits under Section 10.15, only one, Section 10.15.6., *Modification of Parking Requirements by Conditional Use Permit*, provides specific findings that must be met in addition to those standards for all Conditional Use Permits; these additional findings are as follows:

10.15.6.3.1. Will not result in increased traffic congestion or otherwise negatively impact existing traffic flow or pedestrian and vehicular safety;

10.15.6.3.2. Will not create parking impacts for adjacent properties or within Town rights-of-way.

10.15.6.3.3. Will not be contrary to the objectives specified in the Comprehensive Plan;

10.15.6.3.4. Is necessary to permit the reasonable use of the subject property; and

10.15.6.3.5. Will not adversely impact adjacent property or the surrounding area.

Finally, with respect to item 3, as noted above there is currently no minimum requirement for bicycle parking.

Staff prepared amendments for consideration by the Planning Board. Ultimately, the Planning Board, at their November 19 meeting, voted 5-0 to recommend UDO amendments to the Board of

Commissioners that addressed the following (a draft ordinance and markup of affected UDO sections are attached):

- Article 10, Part II., Off-Street Parking and Loading Requirements, is proposed to be amended to allow a reduction of parking based on bicycle parking without a conditional use permit (i.e. by-right), but only where the property has frontage along NC12/S. Virginia Dare Trail or NC1243/S. Old Oregon Inlet Road.
- Article 10, Part II., Off-Street Parking and Loading Requirements, is proposed to be amended to allow a reduction of parking based on bicycle parking with a conditional use permit, but only where the property has frontage along a two-lane roadway, or a sidewalk or similar path crosses the property or is located along the frontage of the property. A reduction for bike parking is not otherwise allowed with a conditional use permit.
- Article 10, Part II., Off-Street Parking and Loading Requirements, is proposed to be amended to standardize conditional use permit findings for the five parking reduction or modified standard methods.
- Section 10.92.15., Pedestrian Access/Facilities, of Article 10. Part VI., Commercial Design Standards, Division III., Site Design, Section 10.92., Street Access, Parking Lot Design, and Pavement Standards, is proposed to be amended by retitling the Section accordingly and to require "a bike rack...on all properties in non-residential use with parking lots having ten (10) or more vehicle parking spaces, when such properties and located on the east side of US 158 and have frontage on a two-lane roadway; such bike racks shall support at least five (5) bicycles and be accessible to the public."
- Updated references to Section 10.15.6. in Section 5.4.4. (to Section 10.15.2.6.), update the title of Section 10.15 as included in Section 7.35.2., and update the reference to Section 10.15.5 in Section 8.6.6.7.4. (to Section 10.15.1.2.).

'BACKGROUND

As noted above, the proposed amendments are the result of discussions at the Board of Commissioners' Retreat on September 12, 2019 where the Board discussed perspectives with regard to the reduction of required parking, and ultimately directed Staff to develop amendments in response to the issues discussed.

'With regard to the current provisions allowing for a parking reduction for bike racks, this allowance was adopted in 2010 (the provisions were slightly amended by the amendments adopted in 2015 and discussed below); a copy of the ordinance, as well as the minutes from the January 6, 2010 and January 20, 2010 Board of Commissioners meetings where the amendment was considered, are attached. As noted in the minutes, the intent of the provision was to "promote the use of bicycles as an alternative means of transportation within the Town while allowing for a reduction in required parking spaces for commercial business that incorporate bike racks into their site and parking design."

'With respect to the current form of off-street parking ordinance, this was the result of amendments that were adopted in 2015 based on the efforts of the Planning Board Parking Subcommittee from 2013 to 2014. While the parking reduction for bike parking and shared parking reductions existed, the amendments did establish the broader provision allowing a conditional use permit to modify parking requirements. A copy of the 2015 ordinance is attached for the Board's review.

'POLICY CONSIDERATIONS

The most direct policies in the Comprehensive Plan pertaining to parking, including accommodations for bicycles, are contained in the Land Use Element, within 3.2.4., Site Development Characteristics, F. Parking, below, and policy LU-23 and related actions, as follows:

'F. Parking - A comprehensive revision to the town's parking standards was completed in 2015. The goal of this revision was to identify parking standards in the town's ordinance that were leading to excess parking on development sites. Prior to this, the town had recently completed a new stormwater ordinance and excess parking was identified as a major contributing factor to stormwater runoff. The town is largely dependent on automobile transportation, and off street parking will continue to be a necessary component of the town's land use requirements. The town should continue to require adequate parking for all land uses while it continues to work towards its other goals for increasing nonmotorized transportation and reducing automobile dependency. Incentives have and should continue to be considered for sites that provide facilities for bicycles and that are also served by pedestrian facilities. As future ordinance revisions occur, the town should maintain consistency between permitted land uses and its parking tables and evaluate changes as necessary to correlate parking standards with actual parking demand based on best available data and information.

'LU-23 - Require sufficient parking for commercial businesses with parking area design regulations that limit impacts on neighbors and surrounding land uses.

'LU-23a: Explore incentives or regulations that encourage bike and pedestrian infrastructure to be incorporated into site design.

'LU-23b: Monitor the use of parking and utilize this information to evaluate changes in parking standards.

'LU-23c: Explore maximum limits on the number of parking spaces for each land use.

'PLANNING BOARD RECOMMENDATION

As noted above, the Planning Board, at their November 19 meeting, voted 5-0 to recommend amendments to UDO as summarized, and contained in the attached draft ordinance. In making their recommendation, the Planning Board noted their opinion that the proposed amendments were consistent with the relevant policies contained in the Comprehensive Plan.

'STAFF RECOMMENDATION

Staff recommends adoption of the amendments as proposed. Staff is of the opinion that the amendments pertaining to bicycle parking are consistent with relevant policies contained in the Comprehensive Plan as they both support the incorporation of bike infrastructure into site design and provide for reasonable allowances to reduce required parking where bike parking is provided and supporting infrastructure exists. Further, the amendments serve to standardize findings for all parking-related conditional use permits, allowing the boards to consider impacts specific to parking.

'Please note, the UDO provides expanded and more explicit provisions regarding text amendments and action by the Board of Commissioners under Article 3, *Legislative/Quasi-Judicial Procedures*, Part II, *Legislative Procedures*, Section 3.5, *UDO Text Amendment/Zoning Map Amendment*, as follows. Staff would encourage that particular attention be given to Section 3.5.4.5. and the requirement that the Board adopt a statement prior to adopting or rejecting any text amendment.

3.5.4. Action by the Board of Commissioners.

Action upon an UDO text amendment or zoning map amendment, including the scheduling of a public hearing, will be at the discretion of the Board of Commissioners.

3.5.4.1. *Before an item is placed on the consent agenda to schedule a public hearing, the Planning Board's recommendation on each proposed amendment must be received by the Board of Commissioners. If no recommendation is received from the Planning Board within 30 days from the date when submitted to the Planning Board, the petitioner may take the proposal to the Board of Commissioners without a recommendation from the Planning Board. However, the Planning Board may request the Board of Commissioners to delay final action on the amendment until such time as the Planning Board can present its recommendations. No such limitations shall apply to applications or requests submitted by Town staff or any Town Board.*

3.5.4.2. *After receiving a recommendation from the Planning Board on a proposed amendment, the Board of Commissioners may proceed to vote on the proposed ordinance, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.*

3.5.4.3. *The Board of Commissioners is not required to take final action on a proposed amendment within any specific period of time. Final action on an UDO text amendment or zoning map amendment submitted by third parties will be taken within a reasonable time. Final action taken within 90 days of the public hearing before the Board of Commissioners shall be presumptively reasonable.*

3.5.4.4. *No member of the Board of Commissioners shall vote on any zoning map amendment or UDO text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial and readily identifiable financial impact.*

3.5.4.5. *Prior to adopting or rejecting any UDO text and/or map amendment, the Board of Commissioners shall adopt one of the following statements which shall not be subject to judicial review.*

3.5.4.5.1. *A statement approving the amendment and describing its consistency with the adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest.*

3.5.4.5.2. *A statement rejecting the amendment and describing its inconsistency with the adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest.*

3.5.4.5.3. *A statement approving the amendment and containing at least all of the following:*

3.5.4.5.3.1. *A declaration that the approval is also deemed an amendment to the Comprehensive Plan. The Board of Commissioners shall not require any additional request or application for amendment to the Comprehensive Plan.*

3.5.4.5.3.2. *An explanation of the change in conditions the Board of Commissioners took into account in amending the UDO to meet the development needs of the community.*

3.5.4.5.3.3. *Why the action was reasonable and in the public interest.*

3.5.4.6. *In deciding whether to adopt a proposed amendment to this UDO, the central issue before the Board of Commissioners is whether the proposed amendment advances the public health, safety, or welfare. When considering proposed map amendments:*

3.5.4.6.1. *The Board of Commissioners shall consider the entire range of permitted uses in the requested classification.*

Notice of the Public Hearing was published in the *Coastland Times* on Wednesday, December 25, 2019 and on Sunday, December 29, 2019, as required by law.

Attorney Leidy opened the Public Hearing at 11:13 a.m. There being no one present who wished to speak, the Public Hearing was concluded at 11:13 a.m.

MOTION: Comr. Fuller made a motion to adopt the ordinance re: off-street parking requirements associated with alternative and reduced parking, as presented, with the appropriate corrections made. The motion was seconded by Comr. Renée Cahoon which passed unanimously.

The ordinance concerning the off-street parking requirements, as adopted, is attached to and made a part of these minutes as shown in Addendum "F".

REPORTS AND RECOMMENDATIONS FROM THE PLANNING BOARD AND THE PLANNING AND DEVELOPMENT DIRECTOR

Update on Short-Term Rental (STR) registrations

Planning Director Michael Zehner summarized his report on short-term rental registrations which read in part as follows:

"As requested at the November 6, 2019 Board of Commissioners meeting, Staff is providing the Board with a review and status of the Short-Term Rental ("STR's") registration program.

'Completed Actions and Current Status

- On April 3, 2019, the Board of Commissioners adopted amendments to the Town Code and Zoning Ordinance defining STR's and establishing a registration requirement for STR's. A copy of the adopted Ordinance is attached.
- Between adoption of the Ordinance amendments and the end of May 2019, Staff and the Board of Commissioners considered whether to engage an outside vendor to assist in administration of the registration program. Ultimately, this option was not pursued.
- On August 26-27, 2019, the STR registration program became active with the release of a Registration Form (attached and [HERE](#)) and Guidance & FAQ's document (attached and [HERE](#); later updated 12/4/2019).
- The first STR was registered with the Town on August 29, 2019; from August 29, 2019 until December 5, 2019, 28 STR units were registered.
- On November 13, 2019, the Outer Banks Visitors Bureau provided Staff with an analysis prepared by AIRDNA indicating 1,450 STR units to have been offered for rent on the Airbnb and HomeAway platforms in Nags Head in July 2019, the greatest number of units in any one month based on an analysis from October 2014 through August 2019.
- At the beginning of December 2019, the Town received a list of rental units in the Town from the Dare County Tax Collector. For most properties, this list identifies whether properties are managed and/or taxes remitted by the property owner, traditional management companies, or a STR platform such as Airbnb or HomeAway. Based upon a review of this list, approximately 600 of the 2,200 units

could be eligible for registration under the Town's program.

- On December 6, 2019, a press release was issued reminding owners/operators to register their STR's (attached); between December 6, 2019 and December 31, 2019, an additional 41 STR's were registered.
- As of December 31, 2019, a total of 69 STR units have been registered. Of these, 60 have been whole house STR's and 9 have been partial house STR's.
- STR's registered on or prior to December 31, 2019 may continue to be offered for rent within 2020 without needing to register again until September 1, 2020. As of January 1, 2020, offering an STR for rent that had not been registered in the prior year, or for which registration had not yet been obtained in 2020, would constitute a violation if not registered within 30 days of being offered for rent. The penalty for failing to register would be an initial \$100 fine, with an additional fine of \$50 per day that a property is offered for rent without being registered.

Considerations and Future Actions

- Within the first month of 2020, Staff intends to contact the owners/operators of those STR units registered on or before December 31, 2019, thanking them for their registration and acknowledging that they may continue to offer the units for rent within 2020 without further registration until September 1, 2020.
- Generally, Staff has found the previously referenced list provided by the Dare County Tax Collector to be reliable with respect to identifying those units subject to and exempt from the registration requirement. While Staff will continue to proactively identify and investigate STR units requiring registration, within the first two months of 2020 Staff intends to send a mailer to the owners of the approximately 600 units likely eligible for registration, but not yet registered, providing notification of the registration requirement.
- To ensure that property owners or representatives can be appropriately contacted in case of an emergency, Staff intends to make the list of registered STR's available to appropriated Police and Fire Department staff.
- To ensure that Occupancy Taxes are appropriately remitted, Staff intends to periodically provide the Dare County Tax Collector with an up-to-date list of registered STR's."

Board members thanked staff for the requested information.

Comr. Fuller said that, from his standpoint, the next step would be to consider a new platform which is concierge services which are those that do not meet the State standard of property management and they rent for others.

Comr. Brinkley confirmed that staff did have the breakdown of whole and partial rentals.

Comr. Renée Cahoon pointed out that there is more to do in order to get those 600 not yet registered to register.

Consideration of a Preliminary Plat for a Major Subdivision, known as Coastal Villas, for an approximately 9.86 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 Preliminary Plat proposes to create 17 lots, along with an associated street and other required improvements

Planning Director Michael Zehner summarized his staff report on the Coastal Villas Subdivision which read in part as follows:

"OVERVIEW

The subject application is a Preliminary Plat for a Major Subdivision of an approximately 9.86-acre property located on the west side of US 158, approximately 300 feet south of the intersection of W. Soundside Road and US 158 ("the Proposed Subdivision"). The Proposed Subdivision would create seventeen (17) lots, located along a new street (Coastal Breeze Way), to connect through to an existing street, Sea Bass Court, with the improvement of an existing public paper/unimproved right-of-way, Mariners Way. No waivers from the subdivision requirements are being sought. As noted, the property is zoned R-2, Medium Density Residential; all proposed lots are conforming, meeting the minimum required lot size of 20,000 square feet and demonstrating compliance with required minimum yard depths (i.e. setbacks; Front: 30 feet, Side: 10 feet, Rear: 20% of lot depth, not to exceed 30).

The Planning Board reviewed the Preliminary Plat at their meeting on December 17, 2019. The Board voted 5-0 to recommend approval of the Plat to the Board of Commissioners, with conditions. The Board's recommendation is detailed below under *Planning Board Recommendation*.

'PROCEDURAL REQUIREMENTS/CONSIDERATIONS

The procedural requirements applicable to subdivisions are provided in Article 4, *Development Review Process*, Part IV, *Subdivision Procedures*, of the UDO; requirements or considerations of note are as follows:

- Pursuant to Section 4.22, *Initial Conference; Preliminary Sketch*, the applicant was first required to submit a preliminary sketch of the proposed subdivision and confer with the UDO Administrator. These requirements were completed, with authorization granted to the subdivider on October 3, 2019 to prepare a preliminary plat to be submitted to the Planning Board (a copy of an email from Michael Zehner to Cathleen Saunders, project engineer, is attached). Please note, the preliminary sketch plan for the subdivision provided for a street connection to US 158, with no connection through to Sea Bass Court; the applicant elected to redesign this aspect of the subdivision as part of the preliminary plat submission.
- The following subsections, or parts thereof, to Section 4.24, *Review Procedure for Major Subdivisions*, 4.24.1, *Preliminary Plat*, are applicable to the Proposed Subdivision:
 - 4.24.1.2., in part, "...the UDO Administrator who shall evaluate the plan to determine whether or not it meets the requirements of this Ordinance. The UDO Administrator will solicit and receive comments from other persons or agencies before making final recommendations. If the application is complete, the UDO Administrator will submit it to the Planning Board..."

In general, it was determined by the UDO Administrator that the plan for the Proposed Development meets the requirements of the UDO, to be discussed further below under **REGULATORY & DESIGN REQUIREMENTS/CONSIDERATIONS**. Additionally, comments were solicited and received from Town

Staff; the attached letter from Cathleen Saunders, P.E., Quible & Associates, P.C., dated December 10, 2019, is an accurate representation of these comments.

○ 4.24.1.3., in part, "The Planning Board shall forward its recommendation to the Board of Commissioners within thirty (30) days after first consideration by the Planning Board. If the Planning Board fails to act within the 30-day period, the subdivision will be placed on the next available Board of Commissioners agenda. The Board of Commissioners shall consider the preliminary plat and approve, approve with conditions acceptable to the applicant, or disapprove the plan."

○ 4.24.1.4., in part, "The Planning Board shall determine whether the preliminary plat meets the policy, purposes, and standards established by this Part and shall study its practicability, taking into consideration the requirements of the community and the best use of the land being subdivided. Particular attention shall be given to the arrangement, location and width of streets, their relation to the topography of the land, water supply, sewage disposal, drainage, lot sizes and arrangement, the future development of adjoining lands, construction plans, erosion control plans, and the requirements of the master plan and the official map, if such exist, the zoning requirements and this UDO. The Planning Board shall submit its findings and recommendations to the Board of Commissioners at their next regularly scheduled meeting. The Board of Commissioners may approve, reject or grant conditional approval of the preliminary plat. The Planning Board or the Board of Commissioners, in its discretion, if it deems that health and sanitary conditions in the area, the subdivision plans and planned population density warrant, may require percolation tests of the soil by the subdivider and the installation of appropriate sanitary and waste disposal facilities as a condition of approval."

○ 4.24.1.5., Conditional Approval, "When recommending conditional approval of a preliminary plat, the Planning Board shall state in writing the conditions of such approval, if any, with respect to:

4.24.1.5.1. The specific changes which it will require in the preliminary plat;

4.24.1.5.2. The character and extent of these required changes; and

4.24.1.5.3. The amount of all bonds which will be required as a prerequisite to the approval of the preliminary plat.

Conditional approval of a preliminary plat shall not constitute approval of the final subdivision plat, but rather it shall be deemed an expression of approval of the design submitted on the preliminary plat as a guide to the preparation of the final plat, which will be submitted for approval by the UDO Administrator, and for recording upon fulfillment of the requirements of this Part and the conditions of the conditional approval, if any. The Planning Board or the Board of Commissioners may require additional changes as a result of further study of the subdivision plans or as a result of new information obtained subsequent to the time of conditional approval. The fulfillment of these conditions and the incorporation of these conditions into the preliminary plat shall be determined by the UDO Administrator in accordance with the instructions of the Board of Commissioners. At such time, the Board of Commissioners' approval shall become final, as to the preliminary plat, and the UDO Administrator shall so signify on the plat."

'REGULATORY & DESIGN REQUIREMENTS/CONSIDERATIONS

The regulatory and design requirements applicable to subdivisions are provided in Article 10, *Performance Standards, Part V., Subdivision Regulations, Division II., Approval and Platting Requirements*, and Division III., *Improvements*, of the UDO; requirements or considerations of note are as follows:

- Section 10.51.4., *Covenants and Deed Restrictions*, requires the submission of "proposed covenants, deed restrictions and a hold harmless agreement, in duplicate, which are intended to cover all or part of the tract...For any proposed subdivision amenities including, but not limited to, tennis courts, swimming pools, streets, and vehicular and pedestrian accessways for the benefit of the property owners, the developer shall

establish a property owners association having the responsibility and authority for the upkeep, maintenance, repair, and reconstruction of such amenities and the authority to assess and collect dues and fees from the property owners within the subdivision for this purpose." The applicant has submitted a draft Declaration of Restrictive Covenants for review, with a final version required to be approved in conjunction with approval of the Final Plat.

- Section 10.62, *Required Improvements Enumerated*, indicates the improvements required to be provided by the subdivider, as follows:

- Street rights-of-way and paved streets;
- Water lines, mains, fire hydrants and services;
- Electric and telephone lines and conduit;
- Streetlights and supports and related electric wires and conduit;
- Easements of right-of-way for utilities, where such are not within the street right-of-way;

- Section 10.63, *Dedications*, indicates the improvements and easements required to be offered to the Town or utility authorities for dedication:

- Streets and street rights-of-way;
- Water lines, mains, fire hydrants and services;
- Easements of right-of-way for construction, operation and maintenance of utilities and cable television lines;
- Streetlights and supports and related electric wiring and conduit;

- Section 10.66, *Streets*, establishes the standards for required streets, and specifically *local access streets*, as the proposed street is classified. Design standards for streets are contained in Chapter 36, *Streets, Sidewalks and Other Public Places*, of the Town Code.

- Section 10.68, *Lots*, reiterates zoning requirements for frontage and lot area, but also provides that for "lots fronting on a cul-de-sac or street curve, the frontage may be reduced to not less than thirty (30) feet upon approval of the Planning Board." This reduced frontage applied to lots 1, 2, 10, and 11 in the Proposed Subdivision. The Planning Board's recommended approval of the Proposed Subdivision as presented.

- Section 10.72, *Stormwater Runoff, Storm Drains, and Sewer Lines and Mains*, indicates that "stormwater runoff from lots shall be managed in accordance with Article 11 of this UDO pertaining to Stormwater Management (Part I) and Soil Erosion and Sedimentation Control (Part II)." However, development of the Proposed Subdivision will trigger and require North Carolina Department of Environmental Quality stormwater permitting.

'POLICY CONSIDERATIONS

Policy specific to subdivisions is established in Article 10, *Performance Standards*, Part V., *Subdivision Regulations*, Division I., In General, Section 10.41, Jurisdiction; Policy, Section 10.41.2., of the UDO, as follows:

'10.41.2. It is declared to be the policy of the Board of Commissioners and the Planning Board of the Town to consider land subdivision plats as part of a plan for the orderly, efficient and economical development of the Town. This means, among other things, that land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health, or peril from fire, flood erosion or other menace; that proper provisions shall be made for drainage, water supply, sewerage and other needed improvements; that all proposed lots shall be so laid out and of such size as to be in harmony with the development pattern of the neighboring properties; that the proposed streets shall compose a convenient

system conforming to the official map, if such exists and shall be properly related to the proposals shown on the master plan, if such exists and shall be of such width, grade and location as to accommodate the prospective traffic, to facilitate fire protection and to provide access of firefighting equipment to buildings, and to conform with existing or planned streets and with other public facilities; that a dedication of streets and rights-of-way or easements for pedestrian and utility purposes shall be made; that proper provisions shall be made for the distribution of population and traffic which shall avoid congestion and overcrowding and which shall create conditions essential to public health, safety and general welfare; and that proper provisions shall be made for open spaces for parks, playgrounds and public beaches.

'With regard to the area of the Proposed Subdivision and applicable policies of the *Comprehensive Plan*, this is considered to be within the *Neighborhoods Character Area*, described as "areas of primarily low-density single-family development that have limited to no commercial influence," and further, "The majority of the development in these areas is single-family residential. Lot sizes range from 6,000 square feet to greater than 25,000 square feet. Most newer subdivisions (post 1982) include lots that are 15,000 square feet or greater. It is the town's desire to keep these areas intact and protect them from incompatible land uses."

'Additionally, given the location of the Proposed Subdivision and the extension of the multi-use path along US 158, policies and recommendations contained in the Town's *Pedestrian Plan* are applicable; consistent with those policies and recommendations, the applicant has proposed to provide an extension of the multi-use path through the Proposed Subdivision, to connect to the to-be-constructed path along US 158.

'PLANNING BOARD RECOMMENDATION

At their meeting on December 17, 2019, the Planning Board voted 5-0 to recommend approval of the Preliminary Plat to the Board of Commissions, with conditions, as follows; in their recommendation, the Planning Board acknowledged that the Preliminary Plat satisfied the determinations contained in Section 4.24.1.4. of the UDO concerning applicable policies, purposes, and standards:

1. Prior to the commencement of land disturbance activities and/or construction of improvements, the applicant/developer shall submit construction drawings/plans for all improvements within the subdivision for approval by the UDO Administrator, who may seek input and comments from Town Staff in the review and approval of the construction drawings. In addition to providing details for all improvements, these drawings/plans shall also provide, and not be limited to, information on erosion and sedimentation control, culvert designs, and take into account any intended or required phasing/sequence of construction for the subdivision.
2. The clearing and grading of any lot or portions thereof shall be prohibited prior to the issuance of a building permit for any such lot, except as determined by the UDO Administrator to be necessary for the installation of stormwater measures. The developer/applicant is encouraged to address any necessary phasing and limits of disturbance on submitted construction drawings/plans.
3. Prior to or in conjunction with approval of the Final Plat for the subdivision, drainage easements, to be the responsibility of the applicant/developer and/or their successors (i.e. Property Owners Association), shall be properly conveyed by recordation with the Dare County Register of Deeds; such easements shall be reviewed and approved by the UDO Administrator prior to recordation, and the UDO Administrator may refer the easements to the Town Attorney for review and comment.

'STAFF RECOMMENDATION

Staff is of the opinion that the submitted 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. Therefore, Staff recommends

approval of the Preliminary Plat, with conditions. Staff supports those conditions recommended by the Planning Board; however, it is important to note that following the Planning Board meeting the applicant requested consideration of a change to condition #2, as follows:

2. The clearing and grading of any lot or portions thereof shall be prohibited prior to the issuance of a building permit for any such lot, except as determined by the UDO Administrator **(a)** to be necessary for the installation of stormwater measures **or (b) to accommodate the stockpiling of soil from lots within the subdivision which are subject to an issued building permit.** The developer/applicant is encouraged to address any necessary phasing and limits of disturbance on submitted construction drawings/plans.

'Staff does not object to the requested change and believes it provides a reasonable accommodation while limiting the amount of clearing on lots not subject to immediate development. It is also important to note that pursuant to Section 4.24.1.3. of the UDO, action to approve with conditions is qualified that "conditions [be] acceptable to the applicant.'"

Comr. Renée Cahoon asked if the stormwater basins as designated would be included on the deeds; Mr. Zehner stated that they would. He also stated that Lot 21 swale would be owned by the Town, if accepted.

Mayor Cahoon asked about enforcement of filling in a stormwater basin; Director Zehner said that there are multiple options of recourse to include Town enforcement; he also noted individual development of these lots would be subject to the Town's residential stormwater ordinance.

Mayor Pro Tem Siers confirmed with staff that the overflow of stormwater would go into the natural channels and these channels flow into the basins with no direct charge to the sound. Asked about flowing stormwater into other privately owned property, Director Zehner said that the applicant is required to ensure that water leaving the site doesn't increase another site standards.

Mayor Cahoon asked about the safety aspect of a US 158 access. Director Zehner said that the plan provided by the engineer was submitted to NCDOT and it is up to NCDOT if full movement out of that access would be allowed.

Mayor Cahoon confirmed with Attorney Leidy that the extent that this Board determines US 158 access is in accordance with the Town's ordinance.

Comr. Brinkley questioned, since there is no Southridge Property Owners Association, how the stormwater basins would be maintained. Director Zehner feels there may be some consideration for the developer to have seed money in an account available to the property owners for future maintenance.

Comr. Fuller pointed out that this property was originally residential; Director Zehner agreed and said that it was always zoned R-2 but mixed use was added and then removed – it is now only residential.

Comr. Fuller also confirmed with Director Zehner that Mariner's Way was approved as part of the plan with the intent of serving the new subdivision. Director Zehner said that it was established as part of section 4 with the expectation of access.

In response to a question from Comr. Fuller, Fire Chief Wells said that there are six turns to get to the subdivision; the state requires 20' roadways as well as water supply, but nothing in writing would require them to make it a shorter distance; both he and Dep Fire Chief Hite expressed that it would be a better situation to have access off of US 158.

Comr. Fuller asked about swale maintenance in Southridge; Public Works Director Barile said that it is done if there is a need – such as to re-establish a swale.

MOTION: Comr. Renée Cahoon made a motion to table consideration of the Preliminary Plat for the Major Subdivision, Coastal Villas, until the Board of Commissioners' March 2020 meeting and to ask that the Town 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 for access – as a better solution for access. The motion was seconded by Mayor Pro Tem Siers.

Comr. Fuller asked Comr. Renée Cahoon if her motion includes having the developer provide approval to agree to this now? She responded that her motion asks for a reasonable solution but does not include obtaining the developer's approval right now. Comr. Fuller also confirmed with Attorney Leidy that the motion to table is a legal one.

CONTINUATION OF MOTION: The motion passed unanimously.

RECESS FOR/RECONVENE FROM LUNCH

The Board recessed for lunch at 12:11 p.m. and reconvened at 1:21p.m.

Consideration of a Major Site Plan for the Christmas Mouse, 2401 S. Croatan Highway, submitted by House Engineering, P.C. on behalf of Robeca, LLC; the application involves the redevelopment of the site, including the construction of a 8,682 sq. ft. building for retail use. The property is zoned C-2, General Commercial

Deputy Planning Director Kelly Wyatt summarized her staff memo concerning the major site plan for the Christmas Mouse which read in part as follows:

"GENERAL INFORMATION

'Applicant: House Engineering, P.C. on behalf of Robeca Nags Head, LLC.

'Application Type: Major Site Plan Review

'Purpose/Request: Reconstruction, following a fire, of retail structure with a gross floor area of 8,682 square feet. Parking and site conditions, with minor changes, are intended to remain as currently exist.

'Property Location: 2401 S. Croatan Highway, Nags Head.

'Existing Land Use: Retail structure lost to fire and cell tower facility.

'Zoning Classification of Property: C-2, General Commercial Zoning District.

'Zoning Classification of Surrounding Properties: Properties to the north and south are zoned C-2, General Commercial (vacant and Outer Banks Dermatology). Property to the west, directly across U.S. Highway 158, is zoned C-2, General Commercial (former Kelly's Restaurant). Property to the east, directly across S. Wrightsville Avenue, is zoned C-4, Arts and Culture District and is developed commercially (vacant, former Nags Head Florist).

'Flood Hazard Zone of Property: The western portion of the property is located within an AE 9 Flood Zone; the eastern portion of the property is located within an AE 10 Flood Zone. The four-corners of the proposed structure are shown at elevation 8.5 ft. msl and the applicant intends to flood-proof the commercial structure.

'POLICY AND PLAN CONSIDERATIONS

'Land Use Plan Map/Policies: The 2017 Comprehensive Plan Future Land Use Map classifies this property as General Commercial and it is additionally located within the General Commercial Activity Node. Descriptions of these classifications are below:

'General Commercial: General Commercial designation is located throughout the town paralleling US 158 and US 64. The General Commercial designation is intended to foster a thriving commercial business community with a variety of uses, activities, and scales. Form is as important as use within this designation and there should be a high degree of design quality for the building facade. Planned, mixed use developments are encouraged. Best practices for all types of corridors include: driveway consolidation, bicycle/pedestrian accommodations, traffic calming, and buffering/landscaping.

'General Commercial Activity Node: General Commercial Activity Nodes are focal points of activity and higher intensity development in the town. These are 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. General Commercial Activity Nodes are envisioned to be planned commercial development with a range of uses including retail, office, restaurant, banking, personal service establishments, gymnasium, indoor entertainment, gallery/museum, hotel (boutique/small scale), institutional uses, and multi-family. Future development is characterized by compact development patterns, walkability, and a higher standard of architectural and site design. Multiple, smaller structures are preferred over large strip development. Future development should accommodate pedestrian access from existing pedestrian infrastructure to storefronts. Further, adequate pedestrian infrastructure should be provided to safely traverse and interconnect commercial sites.

'When determining if the proposal is consistent with the Land Use designation, staff considered the following excerpts and policies as being relevant:

- Page 3-14, LU-5 reads, "Promote contiguous and cohesive nodes of commercial development of appropriate size and massing for the surrounding area".
- Page 3-25, LU-15 reads, "Promote architectural standards for commercial development in keeping with the Nags Head style architecture".
- Page 3-32, LU-25 reads, "Support continued use and improvement of non-conforming properties".
- Page 3-126, EC-10 reads, "Promote the growth of existing businesses and the recruitment of new business that are compatible with the town's vision which add full-time, year-round jobs that work to stabilize the employment market".

'Staff finds the reconstruction of this commercial structure to be consistent with land use classification and stated Land Use Policies.

'SPECIFIC INFORMATION

Applicable Zoning Regulations:

- Use Regulations: Section 6.6, Table of Uses and Activities lists "General Retail" as a Permitted Use within the C-2, General Commercial District, no supplemental standards are provided.
- Lot Coverage: Total allowable lot coverage for this site is 55%. Proposed lot coverage is 54.53% and is therefore compliant.
- Height: The maximum allowable building height within the Town is 35 feet; however, pursuant to Section 8.2.1, Dimensional requirements, total height may be increased to 42 feet with the use of an 8:12 roof pitch or greater. The applicant has proposed a structure with an overall height of 35.5 feet with the use of an 8:12 roof pitch therefore height is compliant.
- Architecture Design Standards: Section 10.82, Applicability, of the UDO, states that Commercial Design Standards shall apply to all building construction or remodeling projects requiring a conditional use permit or site plan review. Therefore, reconstruction of the fire damaged commercial structure must adhere to the Commercial Design Standards set forth within Part VI of the UDO. Section 10.83, Design Standards, of the UDO, states that projects adding a total habitable building area of 10,000 square feet or less may elect to comply with the building design requirements by achieving 150 points based on the criteria outlined in the Town of Nags Head Residential Design Guidelines. Projects that elect to comply in this manner shall, in addition to the 150 architectural design points, incorporate specific standards into the design (attached). The proposed architectural design satisfies the minimum standards required by Section 10.83 and additionally achieves 152 architectural design points with the use of a first-floor porch, dormers, 8:12 pitched roof, simulated wood shingles and other miscellaneous architectural details.
- Parking: Pursuant to Article 10, Table 10-2, Required Parking by Use, General Retail shall provide parking at least one (1) parking space for each 250 square feet of gross floor area, plus one (1) parking space for each employee, but no less than two (2) employee parking spaces for each retail unit or establishment. The proposed structure contains 8,682 square feet of gross floor area, requiring 35 parking spaces. Four employees are proposed, necessitating four additional parking spaces. A total of 39 parking spaces are required; 47 spaces are provided and therefore parking is compliant. Please note, the parking lot layout and design is unchanged except for the conversion of 11 asphalt parking spaces into turfstone parking spaces. This conversion not only results in a decrease in impervious area but allows for stormwater infiltration.
- Buffering/Landscaping: Christmas Mouse was originally approved by the Board of Commissioners on March 5, 1987. The code that was in effect at that time did not require buffering or landscaping on this site. Part VI, Performance Standards, Section 10.82, Applicability, states that the design standards contained within this Section shall apply to all building construction or remodeling projects requiring a conditional use permit or site plan review. Section 10.93, Landscaping, Buffering and Vegetation Preservation, requires that the applicant provide buffering as part of the new construction. Section 10.93.3.1.1 Parking Lot Buffers, requires a buffer strip of at least ten (10) feet in width be provided between the parking lot and the street right-of-way line. In this instance, due to the orientation of the driveway and the need to preserve the sight triangle, the applicant will need to provide a minimal number of shrubs and ornamental grasses/herbaceous plants in those areas where the existing parking lot abuts U.S. Highway 158 to the west and Wrightsville Avenue to the east. The applicant has made notation on the site plan of the required landscape buffer area and will work with planning staff to identify the proper plantings prior to the Board of Commissioners review.

Section 10.93.3.7 of the UDO outlines the requirements for providing interior parking lot landscaping. The parking lot, aside from the conversion of asphalt parking into turfstone parking, is to remain unchanged. Staff would note that this is an existing site nonconformity, the proposed scope of work would not increase the degree of nonconformity and therefore it can remain as is.

Section 10.93.3.8 of the UDO outlines the Vegetation Preservation/Planting Requirements. Again, staff would note that this is an existing site nonconformity that is not being increased and therefore can remain as is.

- Lighting: No additional lighting is proposed at this time; existing parking lot lighting remains unchanged. Should additional lighting be desired in the future the required photometrics and fixture information will be required for review and approval prior to permit issuance.
- Signage: No additional signage is being proposed at this time.

Water and Sewage Disposal: The Dare County Health Department has reviewed and approved the proposal as presented (DCHD Approval Attached).

Traffic Circulation: See memorandum from Town Engineer dated December 13, 2019 (Attached).

Stormwater Management: See memorandum from Town Engineer dated December 13, 2019 (Attached).

Fire: The project will be required to comply with all applicable NC Fire Prevention Code requirements as part of building permit application review and issuance.

Public Works: The Public Works Director has reviewed and approved the proposed site plan.

ANALYSIS

Staff finds that the proposal is consistent with the applicable use and development standards, as well as relevant land use policies.

STAFF RECOMMENDATION

Staff recommends approval of the Major Site Plan request as presented.

PLANNING BOARD RECOMMENDATION

At their December 17, 2019 meeting the Planning Board voted unanimously to recommend approval of the Major Site Plan Review as presented.”

Mayor Pro Tem Siers questioned flood proofing. Ms. Wyatt stated that there are certain acceptable practices placed around a structure; Mayor Cahoon explained that a membrane runs along the slab and at any door openings – referred to as removable door dams.

Comr. Brinkley confirmed with staff that the site was nonconforming because of the landscaping.

Board members spoke in favor of the site plan for the Christmas Mouse and were pleased it was being redeveloped.

MOTION: Comr. Renée Cahoon made a motion to approve the Christmas Mouse Major Site Plan as presented. The motion was seconded by Comr. Brinkley which passed unanimously.

Update from the Planning Director

Planning Director Michael Zehner presented his Planning Department update. Town Manager Ogburn asked the Board to consider a joint workshop with the Planning Board to discuss the Flood Damage Prevention Ordinance. The February 18th Planning Board date was mentioned.

It was Board consensus to meet with the Planning Board on Tuesday, February 18th at 9 am for a joint workshop to discuss the Flood Damage Prevention Ordinance. Mayor Cahoon asked that as much information as possible be provided ahead of time. He asked what other communities are doing in this regard. Director Zehner stated that the draft ordinance is expected to be ready by the end of January 2020 which will then be provided to Board members.

NEW BUSINESS

Committee Reports

Comr. Renée Cahoon – She reported that the Government Access Channel Committee will meet in January 2020 and a proposed budget will be forthcoming to the Town for review/approval after that time.

Board/Committee appointments

The summary sheet presented to the Board read in part as follows:

'1 – Consideration of appointment to represent the Town on the Jennette's Pier Advisory Committee - to replace former Mayor Pro Tem Walters.

'2 – Consideration of appointment of Board of Adjustment Chair and Vice-Chair - in accordance with Town Code Sec. 48-592. Attached please find a tracking chart of the current Board of Adjustment members.

'3 – Consideration of staggered terms for Arts & Culture Committee
- Staggered terms so all terms don't expire at the same time to allow for continuity on the committee.

'Attached please find Arts & Culture Committee tracking chart with revised expiration dates for consideration. The tracking chart proposes that three member terms expire 6/6/21 and three member terms expire 12/4/22.

'4 - Consideration of appointments to the Planning Board
- To fill three (3) expiring terms; Two of the three whose terms are expiring are not interested in being reappointed.

'Attached please find the list of candidates interested in serving on the Planning Board and the tracking chart with the current members."

Consideration of appointment to Jennette's Pier Advisory Committee

Town Manager Ogburn stated that this committee is mostly information gathering and provides updates on changes in rules/revenue, any State actions that impact the pier, and is also an advocate for Jennette's Pier.

MOTION: Comr. Renée Cahoon made a motion to appoint Comr. Brinkley to represent the Town on the Jennette's Pier Advisory Committee. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

Consideration of appointment of BOA Chair and Vice-Chair

MOTION: Comr. Renée Cahoon made a motion to reappoint Jack Cooper as Board of Adjustment Chair and Margaret Suppler as Board of Adjustment Vice-Chair. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

Consideration of staggered terms for Arts & Culture Committee

The proposed staggered terms for the Arts & Culture Committee provides for three member terms to expire in 2021 and three member terms to expire in 2022.

MOTION: Comr. Brinkley made a motion to approve the staggered terms for the Arts & Culture Committee as presented [three terms expire in 2021 and three terms expire in 2022]. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

Consideration of appointments to Planning Board

MOTION: Comr. Fuller made a motion to reappoint Kristi Wright to another three-year term on the Planning Board. The motion was seconded by Comr. Brinkley which passed unanimously.

MOTION: Comr. Renée Cahoon made a motion to appoint Molly Harrison to a three-year term on the Planning Board. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

MOTION: Comr. Fuller made a motion to appoint Gary Ferguson to a three-year term on the Planning Board. The motion was seconded by Comr. Brinkley which passed unanimously.

Comr. Fuller asked that age and gender data not be included with Board-provided information (for Board consideration of Town Board/Committee appointments).

MOTION: Mayor Cahoon made a motion to strike gender and age data from future information provided to Board members for consideration of appointments to Town Boards/Committees. The motion was seconded by Comr. Renée Cahoon which passed unanimously.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN ATTORNEY

Town Attorney Leidy asked the Board to consider all oceanfront beach nourishment condemnation cases and not just the Richardson case when entering Closed Session.

Mayor Cahoon received Board concurrence to schedule Closed Session at the end of today's meeting after all other agenda items have been addressed.

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER

Town Manager Ogburn - Discussion of Dominion Energy Nags Head/Manteo Causeway Plan

Town Manager briefly discussed the letter received from Dominion Energy; the summary sheet read in part as follows:

"Attached please find a letter from Dominion Energy dated December 4, 2019 requesting that the Town initiate action to obtain the necessary easements on the Nags Head/Manteo Causeway so that they can perform work on a project that will reduce future storm/hurricane impacts to this area – prior to the 2020 hurricane season.

"The attached letter from Dominion Energy provides additional details on what is being requested and on the work to be done."

MOTION: Comr. Renée Cahoon made a motion to authorize the Manager to sign the easement with Dominion Energy in order that they may move forward to resolve the Nags Head/Manteo Causeway power issues. The motion was seconded by Comr. Brinkley which passed unanimously.

BOARD OF COMMISSIONERS AGENDA

Comr. Renée Cahoon – Red-light cameras

Comr. Renée Cahoon asked Mayor Cahoon to ask the Board of Education to discuss red light cameras at traffic signals. She has noticed more drivers running red lights and would like to increase enforcement. She would also like to see the money obtained from the red light cameras to go to the Town to recoup some of the monies used for the program.

Attorney Leidy said that if the Town is not concerned about costs and only the safety aspects, this is something that can be done easily but in order to recoup some of the costs he would need to look into it further. Attorney Leidy is to check with the City of Greenville and their ordinance on red-light cameras and report back.

Comr. Brinkley - Essentials of Municipal Government Class

Comr. Brinkley attended the recent Essentials of Municipal Government Class which he said was very informative.

Comr. Brinkley – Sign up for Town Alerts

Comr. Brinkley wants to make sure the public is aware that they can sign up to receive Town alerts when there are changes to agendas, sanitation schedules, etc. Information about signing up for these alerts can be provided via the email broadcasts. Town Manager Ogburn pointed out that the Town's email broadcasts are issued on a regular/scheduled basis.

Mayor Cahoon also noted that since not everyone utilizes websites that using the Town's billing for water/tax bills, etc. to inform people they can sign up to receive email updates may also be useful.

Comr. Fuller – Annual Audit Presentation

Comr. Fuller pointed out that the Audit document contains some non-factual information re: top Town employers in the Town – which leads him to believe that there are other errors in the document. He emphasized the importance of the Town not sending out anything with obvious factual errors.

Town Manager Ogburn explained where the information was obtained – from a more regional database – but that this information will be adjusted to fit only Nags Head in the future.

MAYOR’S AGENDA

Mayor Cahoon - Review of Jan 23-24, 2020 Board Retreat Agenda

Mayor Cahoon reviewed the proposed Board Retreat Agenda with Board members; it was Board consensus to make no changes to the proposed agenda as follows:

- Meeting with Planning Board Chair and Vice-Chair
- Pavement Condition and Drainage Infrastructure
- Residential Stormwater Ordinance
- Dare County Control Group MOU
- Recycling (Includes cart rollback Franchise discussion)
- Town’s Carbon Footprint
- Beach Nourishment Municipal Service Districts

CLOSED SESSION

MOTION: Comr. Renée Cahoon made a motion to enter Closed Session to discuss a personnel matter, the Richardson Beach Nourishment Project easement condemnation litigation as well as all the other Beach Nourishment Project condemnation cases, and to consider the July – December 2019 Closed Session minutes - in accordance with GS 143-318.11(a)(6), (3), and (1). The motion was seconded by Mayor Pro Tem Siers which passed unanimously. The time was 2:05 p.m.

OPEN SESSION

The Board re-entered Open Session at 3:57 p.m. Attorney Leidy reported that the Board did take action to approve Closed Session minutes and their disposition for the July – December 2019 time period; the Board also gave direction to the Town Attorney re: pending litigation – but no other action was taken.

ADJOURNMENT

MOTION: Comr. Renée Cahoon made a motion to recess to the Board of Commissioners Retreat on January 23, 2020 at 9 am at the Villas Clubhouse on Villa Dunes Drive. The motion was seconded by Mayor Pro Tem Siers which passed unanimously. The time was 3:58 p.m.

Carolyn F. Morris, Town Clerk

Date Approved: February 5, 2020

Mayor: _____
Benjamin Cahoon