



AGENDA

**Town of Nags Head Planning Board
Nags Head Municipal Complex Board Room
Tuesday, January 21st, 2020; 9:00 a.m.**

- A. Call To Order
- B. Election Of Chair And Vice Chair For Calendar Year 2020
- C. Approval Of Agenda
- D. Public Comment/Audience Response
- E. Approval Of Minutes
December 17th, 2019 Planning Board Meeting
- F. Action Items
Discussion of various amendments to the Unified Development Ordinance

Documents:

[TEXT AMENDMENTS PDF PACKAGE.PDF](#)

- G. Report On Board Of Commissioners Actions
January 8, 2020 BOC Meeting
- H. Town Updates - As Requested
- I. Discussion Items
 - 1. Discussion Of Regulation Of Large Occupancy/Event Homes

Documents:

[LARGE OCCUPANCY-EVENT HOME MEMO FINAL.PDF](#)

- J. Planning Board Members' Agenda
- K. Planning Board Chairman's Agenda
- L. Adjournment



MEMORANDUM

Town of Nags Head

Planning & Development Department

To: Planning Board

From: Kelly Wyatt, Deputy Planning Director
Michael Zehner, Director of Planning and Development

Date: January 17, 2020

Subject: Discussion of various amendments to the Unified Development Ordinance.

Planning Staff received three text amendment requests for consideration at the Planning Board's January 21, 2020 meeting. The amendments for consideration are detailed below:

1. Consideration of a text amendment to the Unified Development Ordinance submitted by Ms. Kate Creef, Assistant General Manager on behalf of Outlets Nags Head, to allow outdoor kiosks in conjunction with or as an accessory use to Retail Shopping Centers located within the C-2, General Commercial Zoning District.
2. Consideration of a text amendment to the Unified Development Ordinance submitted by Ms. April Vaughn of Whalebone Surf Shop to allow outdoor stands for the sale of produce in conjunction with or as an accessory use to General Retail within the C-2, General Commercial Zoning District.
3. Consideration of a text amendment to the Unified Development Ordinance submitted by Ms. April Vaughn of Whalebone Surf Shop to allow beer and wine sales by the glass as a permissible use in conjunction with or as an accessory use to General Retail within the C-2, General Commercial Zoning District.

While the requests are separate, there are some similarities, and because of the informal nature of the submittals, Staff was of the opinion that a larger discussion amongst the Board was warranted, along with a less focused review by Staff in the form of separate memorandums. Staff believes a discussion by the Board at this meeting will provide feedback that will allow the applicant to refine the requests, perhaps with Staff's assistance as might be necessary.

KIOSKS AND OUTDOOR STANDS

Staff is of the opinion that the requested text amendments related to outdoor kiosks at Retail Shopping Centers and outdoor stands for the sale of produce at general retail locations are interconnected, and taking a holistic approach to discussing the two may be ideal. Currently, the Unified Development Ordinance allows Outdoor Stands as an accessory use to Retail Shopping Centers and Group Developments. An Outdoor Stand is defined as "an approved area where the sale of produce, hot dogs, coffee, ice cream or Italian ice and fudge occurs from a cart or structure; supplemental standards associated with this use, as listed in Section 7.76, and outlined below:

Outdoor stands, accessory to shopping centers and group development, are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.76.1. The principal sale of items at an outdoor stand shall be limited to either fresh produce, hot dogs, coffee, ice cream or Italian ice and fudge. The sale of any other items shall be incidental and limited to no more than ten percent of the display area or ten percent of sales.

7.76.2. Only one outdoor stand shall be allowed per site. The stand shall not be required to be a permanent structure and may be located upon a trailer. When located upon a trailer, skirting shall be installed around the perimeter to screen the wheels, axles and towing hitch from view.

7.76.3. The stand area, inclusive of display counters and awnings, shall not exceed four hundred (400) square feet for produce stands and shall not exceed one hundred fifty (150) square feet for hot dog, coffee, ice cream and Italian ice and fudge stands. Refrigeration units may be utilized within the stand area. The location of the stand on the site shall comply with minimum district yard regulations for principal use structures.

7.76.4. Produce stands shall be temporary and may be operated for a period of time not to exceed 180 days annually. The dates of operation shall be limited to between May 1 and November 1 each year. Hot dog, coffee, ice cream and Italian ice and fudge stands may be operated year-round but shall not be left on the property overnight and must be removed daily.

7.76.5. All stands shall comply with applicable Dare County Health Department regulations and permitting requirements.

7.76.6. When located on a site with fifty (50) or more existing parking spaces, no additional parking spaces will be required. When located on a site with less than fifty (50) parking spaces a minimum of three (3) off-street parking spaces in accordance with parking regulations of this UDO shall be provided.

7.76.7. When the regulations contained in the subsection are in conflict with the general regulations of Town Code Section 12 Article III, Peddlers and Itinerant Merchants, the provisions of this UDO shall prevail.

As identified, the allowance for the types of items that are permitted to be sold at Outdoor Stands has been consciously considered through the text amendment process over the years. With the request for a "kiosk", while Staff finds the operation of one to be inherently similar to that of an outdoor stand, a kiosk was not an expressed permissible use, and the intended sale/booking of events, charters, and/or tours was not permitted at outdoor stands; therefore, staff felt that an amendment to the text of the UDO was necessary.

Similarly, and not unrelated, April Vaughn of Whalebone Surf Shop approached Staff to inquire about the ability to hold an outdoor market, with the predominate sale of produce, beneath the recently constructed covered patio area on the southern side of the retail structure located at 2214 S. Croatan Highway. Please keep in mind that text amendments are not site specific, but rather district wide; however, for the purpose of discussion, Staff wanted to provide a visual location associated with the request. As noted above, an "outdoor stand" for the sale of produce is allowed as an accessory use to Retail Shopping Centers, however, this particular location is not a Retail Shopping Center, but rather a stand-alone general retail business and the scope of the requested text amendment does not adhere to the supplemental standards as set forth in Section 7.76.1 noted above.

In the review and discussion, Staff suggests that the Board consider at least the following questions:

- Should there be a maximum area designated for an outdoor stand?
- Should outdoor stands continue to be considered an accessory use, or a principal use and parked independently?
- If a stand is truly an accessory use and for the convenience of the patrons of the principal use, does there need to be a minimum number of parking spaces onsite or the addition of three spaces?
- With more interest being shown in the use of food trucks, should the permissible items to be sold be broadened to include all or more types of food?
- Should the allowed sales at outdoor stands be amended to allow for booking and reservation of trips and events, making the addition of kiosks as a separate use type unnecessary, or should kiosks be added as a separate use type?
- Should amendments be expanded to address/allow outdoor sales that take place seasonally or periodically at many general retail establishments? Is the outside sale of produce significantly different than the outside sale of any retail goods?

BEER AND WINE CONSUMPTION WITH RETAIL USE

The second text amendment request submitted by Mrs. Vaughn is to amend the Unified Development Ordinance to add the sale of beer and wine by the glass for consumption as a permissible use in conjunction with or as an accessory use to General Retail uses within the C-2, General Commercial Zoning District. When Mrs. Vaughn originally approached the Planning Department with her questions, she explained that her vision would be to offer an area within the existing retail structure to allow patrons of the business the ability to purchase a glass of beer or wine to enhance the retail experience. Additionally, she envisions patrons of nearby establishments might also like to come into a seating area to purchase a glass of beer or wine. While Ms. Vaughn has stated that the ability to purchase beer and wine would only be during regular business hours of the principal retail use, if the ability to purchase beverages is available to outside customers, not just those patronizing the principal use, then the use should not be considered an accessory use.

General information to keep in mind from the North Carolina ABC Commission when considering this item:

- On-Premise Permit Malt Beverage Permit can be issued to **any retail business**. Allows for sale and consumption on premise. Also allows for off-premise sales as long as it is in the manufacturer's original container.
- On-premise Unfortified Wine (16% or less ABV) Permit can be issued to restaurants, hotels, eating establishments, food businesses, **retail businesses**, private clubs, conventions centers, etc. Allows for sale for consumption on business premises. Allows for off premise sales as long as it is in the manufacturer's original container.
- Fortified wine and mixed beverage permits cannot be issued to retail businesses.
- Any location that holds permits for on-premise alcohol consumption must have at least two bathrooms in working order for public use.

- On-premise holders must recycle all recyclable beverage containers emptied and/or used on premise.
- No advertising bearing an alcoholic beverage brand name may be displayed outside your business or in the window of your licensed premise. Words that are permissible include "Beer" "Cold Beer" "Draft Beer" "Wine".
- Servers who prepare, serve, sell or deliver alcoholic beverages must be at least 18 years old.
- Minors (16 and 17) can work at a permitted business as long as they do not serve, prepare, sell or deliver any kind of alcoholic beverage.
- If selling they must adhere to Off-Premise Permit Holder Regs.

In the review and discussion, Staff suggests that the Board consider at least the following questions:

- As long as appropriate licenses are obtained, should retail businesses be able to sell beer and wine by glass?
- Should this use be allowed by-right, or with a Conditional Use Permit?
- While the Town allows restaurants, the Town does not allow bars or nightclubs, or generally, establishments that sell alcohol for consumption without also selling food; is this type of use consistent with the Town's values?

NEXT STEPS

Staff will be available to participate in the discussion and answer any questions that arise. After receiving additional input and feedback from the Planning Board and the applicants, Staff will generate proposed text amendments for the Planning Board to review at their February 18, 2020 meeting.

App # 201901096

ZONING AMENDMENT APPLICATION
TOWN OF NAGS HEAD, NORTH CAROLINA

Applicant Kate Creef, Assistant General Manager, on behalf of Outlets Nags Head

Mailing address 7100 South Croatan Hwy Nags Head, NC 27959

Explanation of request

- Zoning Ordinance - Section(s) _____
Attach amendment in ordinance form.
- Zoning Map
Attach copy of current Zoning Map with affected property outlined in red.
Attach names and mailing addresses of the property owners of all parcels of land abutting the parcel in question.

Nature of request

Request to allow reservation kiosks for on-site and off-site recreational activities as permitted use within retail shopping centers.

Reason for request

To enhance property use and customer shopping experience.

Kate Creef, Assistant General Manager, on behalf of Outlets Nags Head
Applicant
12/10/19
Date

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ZONING AMENDMENT APPLICATION
TOWN OF NAGS HEAD, NORTH CAROLINA

Applicant Whalebone Surf Shop, Inc
Mailing address P.O. 1359, Nagshead

Explanation of request

- Zoning Ordinance - Section(s) _____
Attach amendment in ordinance form.
- Zoning Map
Attach copy of current Zoning Map with affected property outlined in red.
Attach names and mailing addresses of the property owners of all parcels of land abutting the parcel in question.

Nature of request

To install a fenced in area
under our existing Pani to
accommodate a small garden center
accentuated with surfboards and floral
creating a visual as most Hawaiian
branded retail has incorporated.
veggies / floral and surfboards designed
with loose floral theme
sea oats, golden rod, Pennywort etc.

Reason for request

To "fix" create not only
usage for our awesome Pani area,
but to produce extra income to help
with additional enhancement.
With the competitiveness of online retail
adding a Smoothie Veggie for a local
super would increase our internal
business product. and sales tax for Dore Co.

Applicant [Signature]
Date 12/10/19



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ZONING AMENDMENT APPLICATION
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Mailing address P.O. 1359, Nags head

Explanation of request

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Attach copy of current Zoning Map with affected property outlined in red.
Attach names and mailing addresses of the property owners of all parcels of land abutting the parcel in question.

Nature of request

To upgrade the interior of Whalebone to create a more appealing shopping experience by adding to:

- o 14x14 lounge area created like a library with historical surf magazines books with small bar to accommodate coffee, Beer, wine giving the shoppers a more fun Outer Banks experience infused by 45 years of Whalebone history.

Reason for request

To increase not only a viable shopping experience but to increase sales and income.

Obviously everyone is aware that online sales especially in the retail realm are being burdenson.

The increase would definitely help with local sales tax increase, as well for the entire town

Applicant

JLW
12/10/19

Date



MEMORANDUM

Town of Nags Head

Planning & Development Department

To: Planning Board
From: Kelly Wyatt, Deputy Director of Planning & Development
Michael Zehner, Director of Planning & Development
Date: January 17, 2020
Subject: Discussion of Large Occupancy/Event Home Regulations

At the Planning Board's December 17, 2019 meeting, it was brought to the Board's attention by Planning Board member David Elder that the Town of Kill Devil Hills had requested that the North Carolina Code Officials look at State Building codes and review the definition of "Single-Family Dwellings" vs. large "Event" Homes/"mini hotels". Mr. Elder noted that of particular concern is the ability for emergency responders to access these types of structures. Staff noted they would continue to review the subject and provide information to the Board at their January 2020 meeting.

Within the Town of Nags Head "Large Residential Dwellings" are defined as a single-family dwelling or two-family dwelling (duplex) that has 3,500 or more square feet of enclosed habitable living space. The following regulations apply to "Large Residential Dwellings":

- Homes with greater than 3,500 square feet of enclosed habitable living space can only be constructed on lots 16,000 square feet or greater in area, with the exception of within the SPD-C, Village at Nags Head District.
- The maximum enclosed habitable living space for a large residential dwelling is 5,000 square feet, with the exception of dwellings located within the SED-80 District.
- Large residential dwellings shall meet a side yard setback of fourteen (14) feet. This side yard setback may be reduced to the required side setback for the district in which the home is located should the owner voluntarily elect to comply with the Nags Head Residential Design Guidelines, requiring a minimum amount of architectural design points be obtained.
- Large residential dwellings shall either preserve a minimum of 10% of the lots total area with existing natural vegetation – OR – plant a minimum of 15% of the lots total area. A minimum of 50% of the plantings must be locally adaptive evergreen trees species. Height and caliper specifications are required for both tree and shrub species.
- The maximum permitted wastewater capacity for large residential dwellings shall not exceed 1,080 gallons per day.
- Height of large residential dwellings is the same as the town standard of 35 feet with the ability to increase height to 42 feet with the use of a minimum 8:12 roof pitch.

In January 2019 the Town of Duck adopted an ordinance to establish standards for the scale of residential development. This amendment was in response to the North Carolina General Assembly's passage of Session Law 2015-86 in June 2015 which revoked the authority of local governments to limit the number and types of rooms in a residence. In contrast to our ordinance, the Town of Duck does permit homes larger than 5,000 of enclosed living space, however, the permissible area is tied to the area of the lot. A chart of maximum residence sizes for the Town of Duck is provided below.

Lot Size (sf)	Maximum home size (standard)	Maximum home size (large)
9,999 or less	3,500 sf	3,500 sf
10,000 – 14,999	4,000 sf	4,000 sf
15,000 – 19,999	5,000 sf	5,000 sf
20,000 – 24,999	5,500 sf	7,000 sf
25,000 – 29,999	6,500 sf	8,000 sf
30,000 or greater	7,000 sf	9,000 sf

Keep in mind that the Town of Nags Head prohibits homes with enclosed habitable space above 5,000 sf regardless of lot size (except in the SED-80 District). Additionally, the Town of Duck has increased setbacks based upon the total size of the lot, landscape preservation or planting requirements, as well as architectural requirements for large residential dwellings.

The Town of Duck does have a “Wedding Event Registration Policy”. You can review this information at the following link: <https://www.townofduck.com/getting-married-in-duck/> . In short, this registration is for wedding-related gatherings with 50 or more attendees in a private residence in the Town of Duck. These events must be registered with the Town of Duck Department of Community Development at least thirty (30) days prior to the event date. The registration will provide information for notification of property owners, neighborhood associations, and public safety personnel and will also provide contact information for the responsible parties who could be contacted during the event if necessary.

The Town of Southern Shores defines a “Large Home Dwelling” as any residential structure exceeding the maximum size, maximum transient occupancy capacity or maximum septic capacity for such structures in the zoning district in which it is located. Large home dwellings are not a permitted use in any zoning district. Within the individual zoning districts, RS-1, RS-10 and R-1 Detached single-family dwelling and vacation cottages are a permitted use provided that such residential structure shall not be: (i) advertised to accommodate, designed for, constructed for or actually occupied by more than 14 overnight occupants when used as a vacation cottage; or (ii) have a maximum septic capacity sufficient to serve more than 14 overnight occupants. In addition, each zoning district restricts the maximum size of any single-family dwelling to 6,000 square feet of enclosed living space.

Of note, the Town of Southern Shores recently considered a zoning ordinance amendment which would impose regulations on the use of single-family dwellings for special events. A copy of the draft ordinance is included in this package; however, this ordinance was not adopted. It is noted that the purpose of the drafted revisions was to ensure that special events take into account and are managed such that the public health, safety or welfare of the citizens and visitors to the Town who attend those events or live in the vicinity of the events are taken into account. The draft ordinance required that a free of charge permit be sought for any event expected to have more seventy-five (75) attendees. Events held at authorized event facilities, events held at commercial facilities, events held or managed by the Town, and events within established institutional uses were exempt from the requirement to obtain a permit.

Some key takeaways of the proposed ordinance are below:

Limited Special Event (75 – 125 attendees)

- For a Limited Special Event (75 – 125 attendees) an application must be received 14 days in advance of the event.
- The applicant must provide the date, time and location of the event as well as the contact information for the person in control of the event.
- A certification by the applicant that they are aware of and intend for the event to comply with all requirements of the Town's Code of Ordinances with regard to zoning, nuisance, noise, lights and other relevant provisions.
- Sketch plan of the property and structures showing the expected location of attendees, points of ingress and egress to any structures and location of any hazardous materials such as fuel or gas.
- A certification that sufficient parking for the event has been provided via onsite parking or special offsite parking agreements.
- A certification that the contact person will at all times have on their person (i) the phone associated with the contact information; (ii) a copy of the special events permit issued; and (iii) a list of attendees that can be used to determine whether anyone is unaccounted for in an emergency.
- If the event is to be held on a property adjacent to NC 12 during the period between Memorial Day and Labor Day, the applicant must provide a traffic management plan showing how traffic to the site will be managed in such a way to avoid unreasonable additional congestion upon NC 12.
- For any special event at which food or drink will be served or that will occur over a more than four-hour period, a certification by the applicant that at least one temporary wastewater facility or portable toilet will be onsite.

Large Special Events (greater than 125 expected attendees)

- For Large Special Events (greater than 125 expected attendees) an application must be received 30 days in advance of the event. In addition to the requirements for a Limited Special Event, the applicant for Large Special Event must certify that any exterior decks being used by attendees are structurally sound to support the potential use users of the deck or, must allow the Town's building inspector to inspect the decks to determine whether an engineer's certification is required.

- In is the discretion of the police chief or the fire chief or their designee, the applicant shall allow for an inspection of the exterior grounds of the property to determine potentially dangerous conditions on the property and to determine how best to access the property and structures in case of fire or emergency during the special event.
- A traffic management plan showing how traffic will be managed to avoid unreasonable congestion on any adjacent roadways.
- A certification that sufficient parking for the event has been provided onsite and/or offsite with the appropriate agreement in place and narrative and site plan showing all proposed parking supporting the event.
- A certification that the designated person to contact under the application will have access to first-aid supplies on-site in sufficient quantities to address minor injuries to at least 10% of the expected attendees.

At any special event, if alcohol is to be served or sold, the applicant shall obtain any necessary approvals from the Alcoholic Beverage Control Commission and must make such documentation available upon request and must certify on their application that the approvals, if any were required, have been obtained and will be complied with during the event. Additionally, if tents are to be used for any special event requiring a permit, the applicant shall obtain any necessary approvals required under the North Carolina Fire Code and must make such documentation available upon request on certify that it will be complied with during the event.

In summary, reviewing the allowances of other nearby towns, the Town of Nags Head currently has the most restrictive regulations on permissible living area for large residential dwellings, however, there may be some merit to discussing certain aspects of regulating special events within the Town. While the ordinance drafted by the Town of Southern Shores was very extensive, it may provide some discussion points for the Planning Board in moving forward with regulations if so desired.

Planning staff will be available at the January 21, 2020 Planning Board to discuss this item further.