



MEMORANDUM

Town of Nags Head

Planning & Development Department

To: Board of Commissioners
From: Kelly Wyatt, Planning Director
Date: January 26, 2023
Subject: Update & Request for Public Hearing to consider UDO and Zoning Map Amendment requests pertaining to the Historic Character Area and the moratorium adopted on October 19, 2022.

In response to the Board of Commissioners adopted moratorium of October 19, 2022, prohibiting all non-residential developments located within the C-2, General Commercial Zoning District applicable to the areas from Danube Street north to Hollowell Avenue, between US Highway 158 and NC12, Planning staff is coming before the Board of Commissioners at their February 1, 2023 meeting to provide an update on the research and analysis that has been completed to date, to outline the Planning Board's recommended revisions to the Unified Development Ordinance and Zoning Map, and to request that the public hearing on this item be held at the Board of Commissioners March 1, 2023 meeting.

As outlined in the adopted moratorium, the Planning Board had three opportunities to discuss potential outcomes within the Historic Character Area. At their first meeting on November 10, 2022, the Planning Board's primary focus and discussion centered around the current/existing zoning regulations, possible incompatible land uses and what would result to any nonconforming situations created as a result of any possible rezoning. The Planning Board also expressed interest in having more information on what protections could be in place for Historic Cottage Row. It was noted that while there may be a zoning district designation better suited for this area, the zoning district alone would not offer any architectural protections for residential structures. In 2015 restrictions on the ability for local governments to adopt residential architectural standards were adopted by the North Carolina General Assembly. S.L. 2015-86 became effective law in North Carolina on June 19, 2015. This and prohibits the regulation of "building design elements". This prohibition covers exterior building color, type or style of exterior cladding material, style or materials of roofs or porches, exterior nonstructural architectural ornamentation, location of architectural styling of windows and doors, including garage doors, location of rooms, and interior layout of rooms. These limits have been codified as NCGS 160D-702(b).

At their December 13th, 2022 meeting, planning staff summarized for the Planning Board what had been expressed to them from property owners within the Historic Cottage Row area, as well as within Old Nags Head Place. Property owners within Historic Cottage Row conveyed strong support for having their properties rezoned from a commercial designation to a residential designation and property owners within the Old Nags Head Place Subdivision requested that consideration be given to rezoning their properties and the neighboring properties from a commercial designation to a residential designation. Specifically, they were interested in the R-3, High Density Residential Zoning District, given that the area has been

developed to the R-3 dimensional standards, despite it being zoned a mixture of R-3, High Density Residential, CR, Commercial Residential and C-2, Commercial Services.

Also at the December 13 meeting, staff presented to the Planning Board a series of three (3) maps for their consideration. The first was the area of the moratorium mapped with the current zoning designations, the second map depicted the moratorium area with a C-1, Neighborhood Commercial zoning designation and the third map depicted the moratorium area with a combination of R-3, High Density Residential zoning and C-1, Neighborhood Commercial zoning designation. Staff noted that lots west of NC 12, adjacent to Historic Cottage Row had dimensional standards more aligned with that of the R-3, High Density Residential Zoning designation, thus the recommended R-3 zoning. After discussion on the proposed mapping, the consensus of the Planning Board was they preferred the option depicting the area of the moratorium with a combination of the C-1, Neighborhood Commercial zoning designation and R-3, High Density Residential zoning designation.

Planning staff and the Planning Board discussed possible text amendments that would be necessary to ensure that Section 6.6, Table of Uses and Activities, would reflect the intent of the Historic Character Area as stated within the Town's Comprehensive Land Use Plan. Noting the extent of text amendments that would be necessary, staff introduced the idea that the Planning Board could also consider establishing a new zoning district, leaving the C-1, Neighborhood Commercial zoning district intact. The Planning Board expressed interest in this option.

At their January 17th, 2023, meeting, staff prepared and presented draft ordinance amendments for the establishment of the C-5, Historic Character Commercial Zoning District. At the conclusion of their discussion, the Planning Board voted unanimously to recommend adoption of the proposed text amendments to the Unified Development Ordinance to create the C-5, Historic Character Commercial Zoning District including amendments to the table of uses and activities, dimensional standards, and special commercial building design criteria. The Planning Board also voted unanimously to recommend adoption of a zoning map amendment to rezone the moratorium area to a combination of the R-3, High Density Residential Zoning District and the C-5, Historic Character Commercial Zoning District.

The draft ordinance reviewed by the Planning Board is included for the Board of Commissioners consideration and contains the following amendments:

- Section 6.2.2, Zoning Districts Established, to include the proposed C-5, Historic Character Commercial District.
- Section 6.2.4, Commercial Districts, to include the C-5, Historic Character Commercial District and create a draft intent narrative, outlining the district's purpose.
- Section 6.6, Table of Uses and Activities to include the C-5, Historic Character Commercial District to propose which uses should be allowed within the proposed C-5 District. Note that due to the significant historical character of this area, staff has proposed that all commercial uses be reviewed via the Special Use Permit process so as to allow both the Planning Board and Board of Commissioners the ability review each application. Additionally, you will note that there are far fewer uses permitted in the proposed C-5 District than within the CR, C-1 and C-2 Districts.
- Section 8.2, Development Standards – Primary Districts, to establish dimensional requirements for the proposed C-5, Historic Character Commercial District. Note that the proposed lot coverage allowance is 40% of the lot area, however it may be

increased to 50% with the use of permeable paving materials. This reduction in lot coverage allowance is a result of significant discussion by the Planning Board on the standing water concerns within this area and the need to encourage, promote and in some cases require, more utilization of permeable surfaces.

- Section 7.15, Supplemental Regulations for Pet Shop/Grooming Shops. The Planning Board felt as though grooming only would be an acceptable use to allow within the proposed C-5 District.
- Section 8.3, Special Development Standards, to add Section 8.3.2 which sets forth special commercial building design criteria for both new and existing commercial structures within the proposed C-5, Historic Commercial District. Additionally, this section recommends applying a maximum habitable building area based upon the lot's frontage on either NC 12 or US Highway 158.
- Section 8.6.6.4, Special Requirements for the C-3 District and C-5 District, to set forth lot coverage allowances within the C-3 and C-5 District, noting that the C-5 District contains a special allowance for increased coverage with the use of permeable materials.
- Section 10.82, Applicability of Commercial Design Standards to add the proposed C-5 District to those districts to which the design standards apply.
- Sections 10.24, 7.78, 7.45, 7.23 and Appendix A, Definitions to be updated with the C-5, Historic Character Commercial District.

Also included for the Board of Commissioners consideration are the various attachments presented to the Planning Board for discussion purposes. These include:

Attachment A – Various draft text amendments within the Unified Development Ordinance and Town Code establishing the C-5, Historic Character Commercial District.

Attachment B - A series of three (3) maps for the Planning Boards consideration:

- Existing Zoning Map. This map shows the existing zoning designations within the area of the moratorium.
- Option 1. This option depicts rezoning the entire area of the moratorium to C-5, Historic Character Commercial.
- Option 2. This option depicts the combination of rezoning the area of the moratorium to C-5, Historic Character Commercial and R-3, High Density Residential.

Attachment C – Chart compiled by staff listing all the commercial businesses located within the Historic Character Area and whether the use would be permitted within the C-5, Historic Character Commercial District as currently proposed. With the proposal to limit habitable building area to 3,500 square feet on lots adjacent to NC 12 and 10,000 square feet adjacent to US Highway 158, we have also noted whether the existing building conforms to the area limitations.

Attachment D – Article 5 of the Unified Development Ordinance, Nonconformities.

Staff will be available to participate in the discussion at the Board of Commissioners February 1, 2023, meeting.

