



DRAFT AGENDA

**Town of Nags Head Planning Board
Nags Head Municipal Complex Board Room
Tuesday, January 16, 2023; 9:00 a.m.**

- A. Call To Order
- B. Election Of Chair And Vice Chair For Calendar Year 2024
- C. Approval Of Agenda
- D. Public Comment/Audience Response
- E. Approval Of Minutes
December 19, 2023 Planning Board Meeting.

Documents:

[DECEMBER 19 2023 DRAFT MINUTES.PDF](#)

- F. Action Items
 - 1. Consideration Of Text Amendments
submitted by Albemarle & Associates, PE on behalf of Golasa Holdings, LLC to allow the long-term rental of units within existing hotels and motels.
 - 2. Consideration Of Text Amendment
to remove the use of "Restaurant, Drive-Through" from all zoning districts within the town.

Documents:

[REMOVAL OF DRIVE THROUGH USE TEXT AMEND FOR PB.PDF](#)

- G. Report On Board Of Commissioners Actions
January 3rd, 2024

Documents:

[JAN 3 2024 BOC ACTIONS KW HIGHLIGHT.PDF](#)

- H. Town Updates - As Requested
- I. Discussion Items

1. Update On Status Of Recent Multi-Family Development Draft Amendments.
2. Planning & Development Department 2024 Work Plan.
3. Discussion And Acceptance Of The Planning Boards 2024 Submittal Calendar.
4. Planning & Development Directors Report
December 29th, 2023

Documents:

[PLANNING DIRECTORS REPORT FOR BOC.PDF](#)

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

**Town of Nags Head
Planning Board
December 19, 2023
- DRAFT -**

The Planning Board of the Town of Nags Head met on Tuesday, December 19th, 2023, in the Board Room at the Nags Head Municipal Complex.

Planning Board Chair Megan Vaughan called the meeting to order at 9:00 a.m. as a quorum was present.

Members Present

Megan Vaughan, Molly Harrison, Meade Gwinn, David Thompson, Gary Ferguson, Kristi Wright, David Elder

Members Absent

None

Others Present

Kelly Wyatt, Joe Costello, Andy Garman, Lily Nieberding,

Election Of Vice Chair for Calendar Year 2023

Chair Vaughan called for nominations for Vice Chair. Molly Harrison moved to nominate Meade Gwinn. David Elder seconded the motion and the motion passed unanimously.

Approval of Agenda

Molly Harrison moved to approve the agenda. David Elder seconded, and the motion passed by unanimous vote.

Public Comment/Audience Response

None

Approval of Minutes

Chair Vaughan asked for a motion to approve the minutes of the November 21, 2023, meeting. David Elder moved to approve the minutes as presented; Meade Gwinn seconded, and the motion passed unanimously.

Action Items

Special Use/Site Plan Review submitted by Quible & Associates, P.C. and Beacon Architecture and Design PLLC, for the construction of a Trade Center. The property is zoned C-3, Commercial Services and is located on Lot 2a of the Charles L. Sineath Subdivision (PIN #989317113533), vacant lot directly behind TW's Bait and Tackle. (Expired – seeking re-approval)

Planning Director Kelly Wyatt explained that the Special Use/Site Plan review for the Trade Center was reviewed and approved by the Nags Head Board of Commissioners on November 2nd, 2022. This 2022 approval was not a vested right, so the site plan approval expired one (1) year from the date of approval, meaning the site plan approval expired on November 2nd, 2023.

Section 4.15, Time Limits for Site Plan, Zoning Permits, & Building Permits, of the Unified Development Ordinance, sets forth the timeline for permitting. Ms. Wyatt reviewed this section for the Board noting that following site plan approval by the Board of Commissioners a building permit must be issued within twelve (12) months from the date of approval, or the site plan approval expires, and the applicant must then submit a new site plan review conforming with the current provisions of the Unified Development Ordinance.

Given that a development permit application has not been submitted and a building permit issued, the applicant is requesting re-consideration of the initial approved submittal. As such, the applicant has resubmitted their previously reviewed and approved Special Use/Site Plan Review application for the Planning Boards consideration. Ms. Wyatt noted that a copy of the staff report from the Board of Commissioners November 2nd, 2022 meeting was included in the Agenda packet for the Planning Board's consideration.

The Planning, Fire, Police, and Public Services Department as well as the Town Engineer have reviewed the submittal and find it to be consistent, and still in compliance with the November 2, 2022 approved submittal. There have been no changes in the applicable codes for each respective department over the past year that would affect this submittal, therefore staff recommends approval of the Special Use/Site Plan Review application as submitted.

Ms. Wyatt confirmed for Mr. Elder that the applicant did pull a Land Disturbance permit and cleared the lot. The expectation is that a building permit will be coming soon if this is approved.

Meade Gwinn moved to recommend approval of the site plan as presented. Molly Harrison seconded and the motion passed unanimously.

Consideration Of Text Amendments submitted by Albemarle & Associates, PE on behalf of Golasa Holdings, LLC to allow the long-term rental of units within existing hotels and motels.

Ms. Wyatt explained that Albemarle & Associates, on behalf of Golasa Holdings, LLC had submitted a text amendment request to the Unified Development Ordinance (UDO), which, if adopted would permit the long-term rental of existing hotel units within older hotels and motels. As part of this request the applicant has proposed definitions of the terms "Long Term Occupancy", "Hotel/Studio Unit", and "Legacy Hotel/Motel."

While this type of conversion may not be new in more urban areas, this is not something that has been contemplated previously in the existing UDO. Ms. Wyatt noted that there appears to be a good amount of information and articles available on this type of use and Staff shared links to a few articles that they found interesting and informative in their Staff Report.

The current definition of hotel states that units are intended to be for used for transient guests on a rental basis. The Unified Development Ordinance then goes on to define transient occupancy as occupancy no longer than 30 combined days.

Staff would submit that this proposal, if adopted, could have significant impacts, and should be discussed at length, in an effort to understand the benefits and impacts thoroughly.

Some items for consideration and discussion:

- Accommodations/improvements for a long-term rental may require renovations to ensure the comfort of occupant such as providing permanent cooking equipment. These improvements may be required to secure permits and meet current zoning, building, flood, and CAMA regulations.
- Do long-term renters have different expectations and needs compared to hotel guests? Could lack of amenities and services impact tenant satisfaction?
- Would a mixture of short and long-term stays alter the atmosphere/ambiance of the hotel, impacting the experience of the transient hotel guest?
- Should there be a minimum habitable area for a long-term rental unit?
 - o Current UDO has a minimum hotel unit size of 300 sf. and 400 sf minimum for hotel efficiency and hotel suite.
 - o Current UDO requirements for a dormitory style development require approximately 300 square feet for the first occupant.
 - o The draft multi-family dwelling ordinance recommends a minimum unit size of 800 square feet.
 - o On average hotel rooms in the U.S. are approximately 330 sf, while the average apartment size is 880 square feet.
- Does converting hotel units to long-term rental reduce the overall supply of needed hotel rooms to the extent that it affects visitation/tourism?
- Does the management of long-term leases require different skills and resources compared to managing short-term hotel bookings. Long-term tenants may pose challenges in terms of eviction, non-payment, or property damage, requiring legal involvement that may be more complex than dealing with transient guests.
- Does this conversion lead to parking concerns? If this conversion is allowed should consideration be given to a new parking standard? The current parking standard for multifamily is a minimum of two spaces for each dwelling unit. The current parking standard for hotel is one space per unit if it does not have kitchen facilities and 1.2 spaces if it does have kitchen facilities. When considering the older hotels/motels it may be that existing parking is nonconforming.
- If the older (as proposed "legacy") hotels/motels are experiencing hardships, long-term rentals may provide a steady and predictable income stream for property owners, reducing the impact of seasonal fluctuations. In addition, long term rentals may have lower operational costs compared to a hotel, such as reduced cleaning, laundry, and maintenance expenses.

Ms. Wyatt noted that Planning Staff was not ready to make a recommendation but was available to answer any questions for the Board. Mr. Golasa as well as John DeLucia with Albemarle & Associates were also available to discuss this proposed text amendment further.

Ms. Wyatt confirmed for Chair Vaughan that she was not sure how many legacy hotels this proposed amendment would impact however Mr. DeLucia might have this information.

Mr. Elder inquired why this proposal was only for legacy hotels and questioned if they would be creating a disparity between older and newer hotels. Ms. Wyatt noted that this could be part of the discussion, but this is what the applicant had proposed.

Mr. Thompson noted that he had done a quick drive-by of the area and found maybe only three hotels (non-oceanfront) that this might apply to.

Mr. Elder noted that it seemed that due to the season being longer, there are less hotels closing in the off-season.

Ms. Wyatt confirmed for Mr. Ferguson that Planning Staff do not regulate length of stay at a hotel nor is she aware of any complaints or been given any reason to investigate further.

Applicant John DeLucia addressed the Board and discussed his proposal further. Mr. DeLucia introduced Leor Golasa, who is the son of property owner Israel Golasa. Mr. DeLucia noted that they had purchased the Owens properties including the restaurant and motels. Mr. DeLucia noted that the Owens motels (Motor-court and oceanfront hotel) are considered Legacy hotels. The Town has lost several legacy hotels in the past years due to maintenance costs and the fact that building a large house on a lot is more profitable.

Mr. DeLucia listed the hotels that would qualify under the proposed ordinance: Comfort Inn South, The Dolphin Motel, Cahoon Cottages, The Rodeway Inn, Sea Foam Hotel, Tar Heel Motel, Islander Hotel, First Colony Inn, Sandspur, Oceanside Court and the Colonial Inn.

These are buildings that the Town does not want to see torn down, that are non-conforming, don't meet the standards that people today expect of hotel rooms... they are smaller, don't have good views of the oceanfront. In addition there is a great need for housing in the area, especially for workforce housing. The property owners are in the process of renovating the units... some had cooking facilities some just have microwaves and refrigerators. They have health department approval to upgrade the cooking facilities in the rooms. Mr. DeLucia noted that the motor-court is being renovated to continue to function the way it's always functioned but the property owners see a need for longer-term affordable housing. If they can find a way to rent them as studio apartments they would rather do that instead of renting them out for short-term stays.

Mr. DeLucia noted that this is happening in other areas around town where owners are renting out some units to their employees and other workers.

Mr. DeLucia confirmed that the motor-court has about 29 units that are approximately 350 SF.

Mr. Leor Golasa, with Golasa Holdings, LLC was next to address the Board. Mr. Golasa noted that for them it is not about the money, it is about providing homes for people that need housing. They company owns 50 properties and the majority of those are rented long-term. He works as property manager for those properties. Mr. Golasa noted that this is not something they advertise so few are aware. Mr. Golasa stated that renting out rooms long-term does not make sense financially and does not believe that many hotels will want to do this. Mr. Golasa then proceeded to address the questions that Staff brought up in their report.

Mr. Golasa confirmed for Mr. Gwinn that he would prefer to rent out the units for a one year minimum rather than shorter terms (ex. 90 days). He has a waiting list both for individuals and business owners of 100 people each looking for year-round housing. There is a higher demand for longer-term housing than there is for shorter stays.

Mr. Golasa addressed questions related to storage and bedroom size. Noting that they would probably rent for between \$1400 and \$1700 including utilities. Mr. Golasa also spoke in more detail about the cooking facilities which would include a stove, microwave, sink, refrigerator and cabinets. Mr. Golasa then discussed his plans for an on-site laundry facility. Mr. Golasa noted that he would be making about 50% less on these units than if he were to keep it as a motel and promised that he would charge fair market value for rent.

Chairman Vaughan reminded the Board that this is a text amendment throughout the town and not site specific.

Mr. Golasa and Mr. DeLucia discussed the impacts of long-term vs. short-term rentals with Mr. Golasa reiterating that he sees only benefits from providing much needed long-term housing. Mr. DeLucia noted that short-term rentals (hotel stays especially in season) have a more negative impact on a neighborhood than year-round rentals.

Ms. Wyatt confirmed for Mr. Ferguson that she had sent the proposed text amendment to TRC for their review but had received little feedback or concerns.

Mr. Elder expressed concern about possible disparity between retrofitting something existing vs. different requirements for something being built new, such as size requirements. Mr. Elder noted that this could turn into a density issue.

Chair Vaughan agreed also noting that parking could be a concern.

Mr. Golasa confirmed for Ms. Harrison and the Board that parking would not be an issue for his property but noted if need be he could keep occupancy to one person per unit, however it would be difficult to enforce.

Mr. Gwinn stated that he likes the concept and noted it addresses a problem. They will need to further discuss things such as parking, but they need to give it some serious consideration. Chair Vaughan and Mr. Elder agreed.

Ms. Wyatt noted that she had enough information from the discussion to draft a preliminary ordinance to bring back to the Board for further discussion next month.

Consideration Of Various Text Amendments to the Unified Development Ordinance as it relates to multi-family development.

Ms. Wyatt presented a copy of the updated proposed text amendments for the Board to review noting that the Board has been discussing this item for several months now.

Following the most recent discussion at the Planning Boards November 21st meeting, Planning Staff has provided updates/revisions which Ms. Wyatt proceeded to review for the Board:

- The proposed definition of Dwelling, Multiple Family (Multi-Family) has been revised from "means a *structure* under one roof" to "means *dwelling units* under one roof" to clarify the distinction based on the attorney's recommendation.
- The proposed definition of Townhouse was changed to clarify between dwelling structure and dwelling units based on the Town Attorney's recommendation.
- The definition of Principal Place of Residence has been added to further clarify workforce housing requirements based on the Planning Board's discussion.
- The definition of Qualified Person has been added to ensure only those working/employed in Dare County are qualified to live in multi-family housing based on the Planning Board's discussion.
- Language has been added to the Workforce Housing definition to clarify requirements of the deed restriction based on the attorney's recommendation.
- Section 7.5, Dwelling, Multi-Family Table heading has been revised to clarify between dwelling structure and dwelling units based on the attorney's recommendation.
- The buffer requirements for Large Multi-family developments have been amended to include the higher standard of buffer requirements for high impact uses based on the Planning Board's discussion.

- The Architectural Design Requirements for Large and Small Multi-family developments were updated to include 'Option B' outlined under Article 10, Part VI of the Commercial Design Standards as an allowable option to meet design requirements. The Planning Board should discuss which option is most desirable. A requirement was added for multi-family dwelling buildings to incorporate building design variations; these changes were made based on the Planning Board's discussion.

The Board agreed that any proposed multi-family development, whether large or small, should go through the sketch plan process.

- Additional Accessory Uses were added as allowed uses under Large and Small Multi-Family Developments to include sheds, pool (one per development), walls and fences, private parks, and playgrounds.

The Board agreed that they would like to see Stormwater Management review for any type of Land Disturbance, and/or size of accessory structure.

- Section 7.5, Dwelling, Multi-family was amended to include a requirement for a homeowners' association to be formed for all multi-family development with one of their required duties being to certify that the deed restriction and workforce housing requirements are being met.

Ms. Wyatt confirmed for Mr. Thompson that this would be a requirement for both small and large developments.

- The Commercial Site Design standards for High Impact Uses was amended to include Large Multi-Family Dwelling Development based on Planning Board discussion.

At the previous meeting, Planning Board members expressed concern about potential lighting conflicts arising when multi-family development abuts single-family development. Excerpts of the UDO related to lighting standards were provided as part of the Staff Report.

Ms. Wyatt confirmed for Mr. Ferguson that the Town does have non-conforming tri-plexes but they were not permitted as multi-family and did not meet the requirements of the previous multi-family ordinance.

The Board agreed to have Staff make the necessary revisions, send it to the attorney for final review as well as place it in the Commissioner's Consent Agenda at their January meeting.

Molly Harrisson moved to recommend approval of the proposed text amendments with the stated revisions. David Elder seconded, and the motion passed unanimously.

Discussion And Consideration of Text Amendments related to drive-through restaurants.

Deputy Planning Director Joe Costello explained that SRE Mustang, LLC (Outlets Nags Head) submitted a text amendment application to include the use of "Restaurant, Drive Through" as a permissible use within Commercial Mixed-Use Developments and to amend the Supplemental Regulations associated with drive-through restaurants within the Town.

Mr. Costello explained that currently, drive-through restaurants are only allowed in the C-2, General Commercial Zoning District as a special use and with supplemental regulations that are described in Section 7.29 of the Unified Development Ordinance.

In addition to the applicant's request to list the use "Restaurant, Drive-Through" as a permissible use within Commercial Mixed-Use designations, the applicant has also proposed to amend the supplemental regulations found within Section 7.29 of the UDO. The proposed revised language was provided in the staff memo and includes: Additional buffering requirements, a requirement that the drive-through restaurant must be situated in a retail shopping center development which (a) consists of at least twenty (20) acres of land with frontage on the US 158 right-of-way, (b) has signalized access to and from US 158, and (c) the structure with a drive-through is less than 3,000 square feet.

The Planning Board heard this request at their October 17, 2023 meeting and voted unanimously to recommend denial to of the text amendment as proposed.

Mr. Costello noted that following discussion at the Board of Commissioners meeting on December 3, 2023, the Board noted that there was conflict in the appropriateness and permitting of the Restaurant, Drive-Through use between the Comprehensive Land Use Plan and the Unified Development Ordinance. The UDO currently allows the Restaurant, Drive-Through use as a special use within the C-2, General Commercial zoning district with supplemental regulations. However, the Comprehensive Land Use Plan excludes Restaurant, Drive-Through as a compatible use in all the identified character areas within the town, and notably the Corridors Character Area and Whalebone Character Area. The Board of Commissioners voted to table this item and send it back to the Planning Board to resolve the apparent conflict between the Comprehensive Land Use Plan and the Unified Development Ordinance.

To resolve the conflict between the Unified Development Ordinance and Comprehensive Land Use Plan, the Planning Board may wish to consider one of the following two options:

- Consider amending the UDO as necessary to remove the use of Restaurant, Drive Through as an allowable use in the town. This action would represent implementation of the recommendation of appropriate uses within the Corridors and Whalebone Character Areas.
- Consider amending the Comprehensive Land Use Plan to include the Restaurant, Drive-Through use as an appropriate use in one or more-character areas.

Mr. Costello noted that the Comprehensive Land Use Plan is an official policy document adopted to strategically plan for and enhance the quality of life and physical character of the community. The Comprehensive Land Use Plan was developed over the course of two years, was overseen by a Board of Commissioners appointed Advisory Committee consisting of nine members of the community. These committee members met more than 15 times to discuss and provide guidance on the plan development. In addition, the process of developing the plan included four community and public engagement opportunities and approximately 70 stakeholder interviews/meetings.

Staff has reviewed the agendas, notes, and minutes of the advisory committee meetings and found two instances where drive-through restaurants were discussed. The first is from a set of notes that states: "*Don't want more fast food or drive thru type restaurants*".

The second is a formal minute's document from the advisory committee's December 8, 2016 which says that along the US 158 corridor, uses should reflect only sit down or walk-up restaurants.

The 2017 Comprehensive Land Use Plan sets forth various character areas throughout the Town. These are districts that have their own unique characteristics. These areas provide both the vision and policy direction for the desired use, design, infrastructure, and other elements that new development must consider. The allowable uses and appropriate scales of these uses are

comprehensively described for each of the unique districts to ensure future development and redevelopment preserves the quality and uniqueness of each district.

The list of generally appropriate land uses specifically spells out that “drive-thru restaurants” are not desirable in any of the character areas.

Mr. Costello noted that there are currently three (3) establishments that meet the definition of “Restaurant, Drive Through” within the town: Dunkin Donuts, The KFC/Taco Bell and Sonic. Should the Planning Board be inclined to recommend removal of the Restaurant, Drive Through use from the UDO completely it would have a limited effect on existing drive-through development, creating only one legal non-conforming use in Town (Sonic, within the Village at Nags Head Commercial-2 District) explaining that the other two are nonconforming for other reasons.

On the other hand, amending the Comprehensive Land Use Plan to include Restaurant, Drive Through as an appropriate use in the Corridors Character Area and Whalebone Character Area, has the potential to lead to proliferation of drive-through restaurants on C2, General Commercial zoned property in the area. A total of approximately 231 acres within 250 unique parcels in the Whalebone Character Area would be directly impacted by the change to the Comprehensive Plan. Significantly more properties are zoned C-2 within the Corridors Character Area. Although the special use permit process would still require review and approval from the Planning Board and Board of Commissioners respectively, the justification would exist in the Comprehensive Plan to support future Restaurant, Drive Through development applications.

Based upon the staff analysis above, staff would continue to recommend denial of the proposed text amendment to allow drive-through restaurants as an acceptable use within commercial mixed-use developments, including shopping centers.

Crouse Gray, attorney for the applicant addressed the Board stating that the applicant’s property is the one place where drive-throughs should be allowed. Pretty much all shopping centers have drive-through restaurants in some type of out parcel. The applicant’s property has the parking and septic capacity that would allow this type of development. Mr. Gray reiterated that he feels this proposal would be good for the Town.

Mr. Ferguson noted that while the Comprehensive Plan was not a regulatory document a lot of community input went into the development of it and it depicts what the Town aspires to be.

Mr. Elder stated that for him it goes back to a density and a safety issue.

Mr. Gwinn noted that this proposal does not comply with the vision and the look of Nags Head. While Mr. Gwinn understands the applicant’s point of view, he believes it does not fit the comprehensive plan which was developed with input from a lot of very dedicated people. For this reason, Mr. Gwinn believes that drive-through restaurants should be eliminated from the UDO to remove the conflict.

After some further discussion David Elder moved to recommend denial of the proposed amendments. David Thompson seconded, and the motion passed unanimously.

Report on Board of Commissioners Actions – December 6th, 2023

Ms. Wyatt gave an update on the Board of Commissioner Actions, of note: Recognition of Dep Town Clerk Michelle Gray for on her upcoming retirement after over 27 years of service to the Town. Reorganization of the Board after the November election - Megan Lambert and Kevin Brinkley were

sworn in as Commissioners; the Board elected Mike Siers as Mayor Pro Tem. The Commissioners held three Public Hearings: 1) to consider the Mikita Subdivision Waiver; the Board approved the waiver for one proposed two-lot Minor Subdivision as presented, to include staff's two conditions. 2) to consider text amendments to the UDO as it pertains to including the use of "Restaurant, Drive Through" as a permissible use within Commercial Mixed-Use Developments, as well as amending the supplemental regulations associated with this use; the Board passed a motion to table this item and to return it to the Planning Board for additional review. 3) to consider text amendments as it pertains to the appraisal and purchase of precious metals and antiques and collectibles as an acceptable temporary and accessory use to retail jewelry shops; the Board adopted the ordinance as presented with the exception that the 90 days be reduced to 14 days. Comr. Sanders reported on the Shoreline Management project which was recently turned down on a grant application request. The Board appointed David Thompson to the vacant position on the Planning Board. It was Board consensus to agree with the proposal presented by Town Manager Garman with the goal to identify desired future needs and determine how they could most efficiently be accommodated in the Town Hall/Fire Station Properties Master Plan. Town Manager Garman reported that he and staff recently met with Dare County Environmental Health personnel to learn about new changes to regulations that govern the construction and repair of on-site wastewater (septic) systems. There are some fairly significant changes coming forward that staff feels may impact a lot of residents. He pointed out that Dare County has also expressed their opposition to the regulations. Chair Vaughan noted that the Board needed to appoint a new member to the Septic Health Advisory Committee; after a brief discussion Gary Ferguson was appointed to the Committee.

Town Updates

None

Discussion Items

November 30th, 2023, Director's Report

Ms. Wyatt briefly discussed her Director's Report with the Board which included: Septic Health Advisory Committee, Electric Vehicle Action Plan, Sand Relocation and Dune Management Cost Share Program; Permitting Turnaround; and Dowdy Park Events/Farmers Market/Holiday Markets/Art & Culture Committee.

Planning Board Members' Agenda

Mr. Elder discussed non-conformities and the ability to rebuild non-conformities, especially when it comes to commercial properties. Mr. Elder would also like to revisit parking requirements for commercial development.

Mr. Ferguson discussed the redevelopment of the Epstein Beach Access. Ms. Wyatt will forward a copy of the approved site plan.

Mr. Thompson thanked the Commissioners for appointing him to the Board and is excited to be a member and contribute.

Mr. Gwinn reminded the Board that at the BOC's January meeting there will be a special recognition of former Commissioner Renee Cahoon.

Planning Board Chairman's Agenda

Chair Vaughan thanked everyone for their involvement this past year and wished everyone a Happy Holiday.

Adjournment

A motion to adjourn was made by David Elder. The time was 11:47 AM.

Respectfully submitted,
Lily Campos Nieberding

DRAFT



MEMORANDUM

Town of Nags Head

Planning & Development Department

To: Planning Board

From: Kelly Wyatt, Planning Director
Joe Costello, Deputy Planning Director

Date: January 10, 2024

Subject: Consideration of text amendments to the Unified Development Ordinance to remove the use "Restaurant, Drive-Through"

At their January 3rd meeting, the Board of Commissioners voted unanimously to direct staff to initiate the text amendment process to eliminate the use of "Restaurant, Drive Through" as a permissible use within the Unified Development Ordinance (UDO) to create consistency between the UDO and the 2017 Comprehensive Land Use Plan's guidance.

Currently drive-through restaurants are only allowed in the following instances:

- Within the C-2, General Commercial Zoning District via the conditional use process with supplemental regulations that are described in Section 7.29 of the Unified Development Ordinance.
- Within the Village at Nags Head Special Planned Development District, Commercial-1 and Commercial-2 Zoning District via the conditional use process with supplemental regulations that are described in Section 9.37.5 of the Unified Development Ordinance.

Detailed policy considerations and analysis were provided to the Planning Board and Board of Commissioners during the ongoing review of a text amendment application submittal made by the Outlets Nags Head to expand the use of "Restaurant, Drive Through," to be included within Commercial Mixed-Use developments. The most recent staff report was provided to the Board of Commissioners at their January 3, 2024, meeting and is included as an attachment for reference. The attachment provides context as to why the Board of Commissioners initiated a text amendment process to remove the use of "Restaurant, Drive Through" from the UDO. The timeline below details the major events leading up to the Board of Commissioners recommendation to remove the use of "Restaurant, Drive Through" as an allowable use within the UDO.

Timeline of Events

- April 13, 2023: Text Amendment Application submittal.
- May 16, 2023: The Planning Board considered a text amendment application and Starbucks sketch plan. The Planning Board voted unanimously to recommend denial of the text amendment.

- June 7, 2023: The Board of Commissioners approved a Request for Public Hearing to consider text amendment.
- July 18, 2023: The Planning Board considered a revised text amendment application. The Planning Board voted unanimously to recommend denial of the text amendment.
- September 11, 2023: Text Amendment Application third submittal received.
- August 2, 2023: The Board of Commissioners approved a Request for Public Hearing to consider text amendment unanimously.
- October 17, 2023: Planning Board considered a revised text amendment application. The Planning Board voted unanimously to recommend denial of the text amendment.
- December 3, 2023: Board of Commissioners requested the Planning Board resolve the apparent conflict between the Comprehensive Land Use Plan and the Unified Development Ordinance.
- December 19, 2023: Planning Board considered text amendment application and how to resolve the conflict between the UDO and the Comprehensive Land Use Plan. The Planning Board voted unanimously to recommend denial of the text amendment.
- January 3, 2024: The Board of Commissioners considered a text amendment application and how to resolve the conflict between the UDO and the Comprehensive Land Use Plan. The Board of Commissioners denied the text amendment application and made a motion that directed planning staff to initiate a text amendment process removing the use of Restaurant, Drive Through from the UDO.

Staff has provided a draft text amendment for the Planning Board's consideration. Staff believes that the draft amendments reflect the Board of Commissioner's guidance.

Planning staff will be available at the Planning Board's January 16, 2024, meeting for further discussion

(DRAFT)
AN ORDINANCE AMENDING THE TOWN CODE AND UNIFIED DEVELOPMENT ORDINANCE
OF THE TOWN OF NAGS HEAD, NORTH CAROLINA AS IT PERTAINS TO THE USE
“RESTAURANT, DRIVE-THROUGH”

ARTICLE I. Purpose(s) and Authority.

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

WHEREAS, Section 2.4.4.3 of the Unified Development Ordinance provides that the powers and duties of the Planning Board include developing and recommending policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;

WHEREAS, Section 3.5.1. of the Town Code makes clear that a zoning ordinance text amendment may be initiated by motion of the Board of Commissioners, by motion of the Planning Board, or by application by any person within the zoning jurisdiction of the Town;

WHEREAS, The Board of Commissioners made a motion requesting consideration be given to removing the use “Restaurant, Drive-Through” from within the Unified Development Ordinance, including the supplemental regulations associated with them; and

ARTICLE II. Construction.

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

ARTICLE III. Amendment of the Unified Development Ordinance.

PART I. That **Section 6.6, Table of Uses and Activities**, be amended as follows

	Use Category/ Class	Use Type	R - 1	R - 2	R - 3	C R	C- 1 *	C- 2	C - 3	C- 4	C- 5	S P D- 20	SE D- 80	S P D- C *	O &S	C O	H O	SR O	Regulations
4	Food Service	Restaurant - Drive In					S R	S R			S R								Section 7.28
4	Food Service	Restaurant - Drive Through						S R											Section 7.29
4	Food Service	Restaurant - Neighborhood				P R	P R	P R		P R	P R								Section 7.30

PART II. That **Section 7.29- Restaurant, Drive-Through**, be removed as follows:

~~Restaurant, drive-through, is 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:~~

~~7.29.1. In addition to the buffering requirements of Section 10.93, Landscaping, Buffering, and Vegetation Preservation, the site shall be buffered from all adjacent properties utilizing a 10-foot wide Commercial Transitional Protective Yard as prescribed in Section 10.93.~~

~~7.29.2. The drive-through restaurant must front on the US 158 right-of-way.~~

PART III. That **Section 7.30 - Restaurant, Neighborhood** be amended as follows:

7.30.3. A restaurant site may contain more than one principal restaurant building, or one principal restaurant building in combination with another principal drive-in restaurant, ~~drive through restaurant~~, or takeout restaurant building.

Part IV. That **Section 7.31- Restaurant, Sit Down** be amended as follows:

7.31.1. A restaurant site may contain more than one principal restaurant building, or one principal restaurant building in combination with another principal drive-in restaurant, ~~drive-through-restaurant~~, or takeout restaurant building.

Part V. That **Section 9.36 - Table of Uses and Activities for the SPD-C District** be amended as follows:

Use Category/Class	Use Type	C1	C2	I	Hotel	SF-DET	SF-ATT	MF	TH	REC	Supplemental Regulations
4 Food Service	Restaurant, drive-through	CS	CS								Sect. 9.37.5

Part VI. That **Section 9.37.5 - Restaurant, Drive-Through**, be removed as follows:

~~Drive-through restaurants are allowed as a special use in accordance with Section 9.36, Table of Uses and Activities for the SPD-C District, provided that the boundaries of the entire site, if located within fifty (50) feet of an existing residential use or district, shall be buffered from all adjacent properties and rights-of-way utilizing a 10-foot wide Commercial Transitional Protective Yard as prescribed in Article 10, Part VI, Commercial Design Standards.~~

Part VII. That **Table 10-2: Required Parking by Use** be amended as follows:

Use Category/Class	Use Type	Required Parking
Food Service	Restaurant – Drive-Through	A minimum of 10 additional parking spaces, plus required parking spaces for any other use including, but not limited to, restaurant customer service area or drive-in restaurant

Part VIII. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.
This ordinance shall be in full force and effect from and after the ____ day of ____ 2024.

Benjamin Cahoon, Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

Date adopted: _____

Motion to adopt by Commissioner _____

Motion seconded by Commissioner _____



MEMORANDUM

Town of Nags Head

Planning & Development Department

To: Board of Commissioners

From: Kelly Wyatt, Planning Director
Joe Costello, Deputy Planning Director

Date: December 28, 2023

Subject: Consideration of text amendments to the Unified Development Ordinance
as it pertains to the use "Restaurant, Drive-Through"

Updated Staff Report for Board of Commissioners January 3rd, 2024 Meeting

At the Board of Commissioners meeting on December 3, 2023, the Board noted that there was conflict in the appropriateness and permitting of the Restaurant, Drive-Through use between the Comprehensive Land Use Plan and the Unified Development Ordinance. The Unified Development Ordinance allows the Restaurant, Drive-Through use as a special use within the C-2, General Commercial zoning district with supplemental regulations. However, the Comprehensive Land Use Plan excludes Restaurant, Drive-Through as an appropriate use in all of the identified character areas within the town, and notably the Corridors Character Area and Whalebone Character Area. The Board of Commissioners voted 4-1 to pass a motion to table this item and send it back to the Planning Board to resolve the apparent conflict between the Comprehensive Land Use Plan and the Unified Development Ordinance.

At their December 19, 2023, meeting planning staff presented to the Planning Board the updated information as included below.

It should be noted that the Comprehensive Land Use Plan is an official policy document adopted to strategically plan for and enhance the quality of life and physical character of the community. While this plan is not regulatory in nature it builds upon adopted plans and policies to provide a foundation for decision making, future regulations, and project development. The plan was created utilizing community input to illustrate the vision for the future of Nags Head and define steps to secure that future. The Comprehensive Land Use Plan was developed over the course of two years, was overseen by a Board of Commissioners appointed Advisory Committee consisting of nine members of the community. These committee members met in excess of 15 times to discuss and provide guidance on the plan development. In addition, the process of developing the plan included four community and public engagement opportunities and approximately 70 stakeholder interviews/ meetings.

Staff has reviewed the agendas, notes, and minutes of the advisory committee meetings and found two instances where drive-through restaurants were discussed. The first is from a set of notes that reads:

*“Whalebone-
Concern*

Traffic patterns might impact walkability and safety, also just hard to maneuver a vehicle in this area.

Would be great to have a walking path on opposite side of the road- Town wide concern.

Don't want more fast food or drive thru type restaurants.

Want to distinguish between bypass and beach road between types of business-

Not appropriate for drive thru on beach road

Encourage future development like legacy. “

The second is a formal minute's document from the advisory committee's December 8, 2016, meeting and is attached for the Board of Commissioners review.

To resolve the conflict between the Unified Development Ordinance and the Comprehensive Land Use Plan, the Board of Commissioners may wish to consider one of the following two options:

- Consider amending the UDO as necessary to remove the use of “Restaurant, Drive Through” from the C-2, General Commercial Zoning District. This action would represent implementation of the recommendation of appropriate uses within the Corridors and Whalebone Character Areas.
- Consider amending the Comprehensive Land Use Plan to include the “Restaurant, Drive-Through” use as an appropriate use in one or more character areas.

Timeline of Events

- April 13, 2023: Text Amendment Application submittal.
- May 16, 2023: The Planning Board considered a text amendment application and Starbucks sketch plan. The Planning Board voted unanimously to recommend denial of the text amendment.
- June 7, 2023: The Board of Commissioners approved a Request for Public Hearing to consider text amendment.
- July 18, 2023: The Planning Board considered a revised text amendment application. The Planning Board voted unanimously to recommend denial of the text amendment.
- September 11, 2023: Text Amendment Application third submittal received.
- August 2, 2023: The Board of Commissioners approved a Request for Public Hearing to consider text amendment unanimously.
- October 17, 2023: Planning Board considered a revised text amendment application. The Planning Board voted unanimously to recommend denial of the text amendment.
- December 3, 2023: Board of Commissioners requested the Planning Board resolve the apparent conflict between the Comprehensive Land Use Plan and the Unified Development Ordinance.
- December 19, 2023: Planning Board considered the text amendment application and how to resolve the conflict between the UDO and the Comprehensive Land Use Plan. The Planning Board voted unanimously to recommend denial of the text amendment.

Updated Staff Analysis for Planning Board and Board of Commissioners Meeting

There are currently three (3) establishments that meet the definition of “Restaurant, Drive Through” within the town.

- Sonic, located at 5205 S. Croatan Highway was approved within the Village at Nags Head SPD-C ordinance allowances.
- KFC/Taco Bell, located at 7320 S. Virginia Dare Trail is currently non-conforming as Section 7.29, Supplemental Regulations for Drive-Through Restaurants states that the restaurant must front on US 158 right-of-way.
- Dunkin Donuts, located at 2424 S. Croatan Highway is currently nonconforming in that the Unified Development Ordinance does not currently allow Restaurant, Drive-Through within commercial mixed-use developments such as South Beach Plaza.

Should the Planning Board be inclined to recommend removal of the Restaurant, Drive Through use from the C-2, General Commercial zoning district it would have a limited effect on existing drive-through development as KFC/Taco Bell and Dunkin Donuts drive-through restaurants are already non-conforming and Sonic would not be affected as it is located within the Village at Nags Head Commercial-2 Zoning District.

Amending the Comprehensive Land Use Plan to include Restaurant, Drive Through as an appropriate use in the Corridors Character Area and Whalebone Character Area, has the potential to lead to proliferation of drive-through restaurants on C2, General Commercial zoned property in the area. A total of approximately 231 acres within 250 unique parcels in the Whalebone Character Area would be directly impacted by the change to the Comprehensive Plan. Significantly more properties are zoned C-2 within the Corridors Character Area. Although the special use permit process would still require review and approval from the Planning Board and Board of Commissioners respectively, the justification would exist in the Comprehensive Plan to support future Restaurant, Drive Through development applications.

Map of C2 Zoned Property in Whalebone Character Area



Planning Board Recommendation from December 19, 2023 Meeting

At their December 19, 2023 meeting the Planning Board heard this request and considered the conflict between the Unified Development Ordinance and the Comprehensive Land Use Plan. The Planning Board again voted unanimously to recommend denial of the text amendment as proposed. Additionally, it was their recommendation that the conflict between the UDO and the Comprehensive Land Use Plan be rectified by amending the UDO as necessary to remove the use "Restaurant, Drive-Through" from the C-2, General Commercial zoning district.

Should the Board of Commissioners be inclined to give staff direction to move forward with this, they may also wish to request staff initiate a discussion with the Village at Nags Head to receive guidance on whether they would recommend that the "Restaurant, Drive Through" remain within the Village at Nags Head Commercial-2 zoning designation.

If the Board of Commissioners is inclined to adopt this proposed text amendment, please reference Appendix A for the Statement of Consistency with the Town's adopted Comprehensive Land Use Plan requirements (attached).

Previous Staff Report from Planning Board October 17, 2023 Meeting

SRE Mustang, LLC (Outlets Nags Head) submitted a text amendment application to include the use of “Restaurant, Drive Through” as a permissible use within Commercial Mixed-Use Developments and to amend the Supplemental Regulations associated with drive-through restaurants within the Town.

Currently drive-through restaurants are only allowed in the C-2, General Commercial Zoning District as a special use and with supplemental regulations that are described in Section 7.29 of the Unified Development Ordinance.

Section 7.32, General Provisions of the Unified Development Ordinance, specifies the uses that are allowed to be included within areas designated Commercial Mixed-Use. The Commercial Mixed-Use zone includes Commercial with Accessory Residential, Group Development, Mixed Use Development, Multiple Principal Uses, and Shopping Center. Presently, “Restaurant, Drive Through” defined as “an establishment where drive lane facilities are provided for the serving of prepared food, frozen desserts or beverages directly to a customer in a motor vehicle by means which eliminates the need for the customer to exit the motor vehicle” is not included as one of the allowable uses within a Commercial Mixed-Use Development.

In addition to the applicant’s request to amend Section 7.32 of the Unified Development Ordinance to list the use “Restaurant, Drive-Through” as a permissible use within Commercial Mixed-Use designations, the applicant has also proposed to amend the supplemental regulations found within Section 7.29 of the UDO. The proposed revised language is provided below:

Section 7.29 - Restaurant, Drive-Through.

Restaurant, drive-through, is 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:

7.29.1. In addition to the buffering requirements of [Section 10.93](#), Landscaping, Buffering, and Vegetation Preservation, the site shall be buffered from all adjacent properties utilizing a 10-foot wide Commercial Transitional Protective Yard as prescribed in [Section 10.93](#).

7.29.2. The drive-through restaurant must be situated in a retail shopping center development which (a) consists of at least twenty (20) acres of land with frontage on the US 158 right-of-way, (b) has signalized access to and from US 158, and (c) the structure with a drive-through is less than 3,000 square feet. The Town Board may, in its discretion, approve an alternative site layout with the front of a drive-through restaurant located in the C-2, General Commercial District on US 158 oriented differently (i.e., front façade not facing US 158) as part of the Special Use Permit process.

7.29.3. Where the front façade of the restaurant with drive-through is not oriented toward US Hwy 158, the Town Board may approve such alternative site layout provided that the buffer yard requirements set forth in UDO Section 10.93 are satisfied.

POLICY CONSIDERATIONS

The 2017 Comprehensive Land Use Plan sets forth various character areas throughout the Town. These are districts that have their own unique characteristics. These areas provide both the vision and policy direction for the desired use, design, infrastructure, and other elements that new development must consider. Within each Character Area the plan references a general list of appropriate land uses within the Character Area. These character areas include the Gallery Row- Community Center Character Area, Historic Character Area, Village Municipal Service Character Area, South Nags Head Character Area and the Corridors Character Area. The allowable uses and appropriate scales of these uses are comprehensively described for each of the unique districts to ensure future development and redevelopment preserves the quality and uniqueness of each district. The list of generally appropriate land uses specifically spells out that “drive-thru restaurants” are not desirable (see below) in any of the character areas. In addition, the following Land Use Policies may be applicable:

- LU-1 – Ensure that the character of Nags Head is preserved as a single-family residential beach community with ties to its natural environment. This character is defined by:
 - Buildings with a residential scale and appearance with low heights and small footprints that are designed to reflect the heritage of Nags Head.
 - Commercial development that serves the needs of residents and visitors but respects the goals of the community related to design and appearance.
- LU-23 – Require sufficient parking for commercial businesses with parking area design regulations that limit impacts on neighbors and surrounding land uses. Page 3-31 states, “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.
- EC-6 – Support and foster small, local businesses that preserve and uphold the vision and legacy of the town.

Table 2.6.2.A: Appropriate Land Uses in the Whalebone Junction Character Area

Whalebone Core [1]	Soundside [1]
- Single-Family Residential (5,000 sq. ft. or less) - Hotel/Boutique Hotel - Mixed Use - Accessory residential to residential - Commercial (10,000 sq. ft. or less) - Accessory residential to commercial - Office as an accessory use - Retail - Equipment rentals - Restaurant (Walk-up, sit down, no drive-thrus) - Gallery/Museum - Institutional (Parks, School, Non-Profit) - Personal Service Establishment - Cottage Court	- Multi-Family - Hotel/Boutique Hotel - Accessory residential to commercial - Mixed Use - Commercial - Office as an accessory use - Retail - Restaurant (Walk-up, sit down, no drive-thrus) - Personal Service Establishment - Indoor entertainment - Indoor/Outdoor Recreation - Water Dependent Uses (i.e. pier/boardwalk) - Accessory water dependent use to commercial use, mixed use, or hotel (i.e. pier/boardwalk) - Outdoor Events, Festivals, and Amusements

Table 2.8.2.A: Appropriate Land Uses in the Corridors Character Area [1]

US 158 / US 64	NC 12	SR 1243
- Commercial (40,000 sq. ft. or less for individual buildings, excluding hotels) [2] - Accessory Commercial or Residential to Commercial or Office - Mixed Use - Retail - Office - Restaurant (Walk-up, sit down, no drive-thrus) - Banking Institution - Personal Service Establishment - Gymnasium/Fitness Studio - Indoor Entertainment - Gallery/Museum	- Single-Family Residential (5,000 sq. ft. or less) - Accessory Residential to Residential - Mixed Use - Commercial (10,000 sq. ft. or less) - Accessory residential to commercial - Office - Retail - Equipment rentals - Restaurant (Walk-up, sit down, no drive-thrus) - Gallery/Museum - Institutional (Parks, School, Non-Profit) - Personal Service Establishment	- Single-Family Residential (5,000 sq. ft. or less) - Accessory Residential to Residential - Cottage Courts - Hotel/Motel (northern end only) - Fishing Piers with accessory restaurant

STAFF RECOMMENDATION

As referenced throughout the 2017 Comprehensive Land Use Plan, the Town of Nags Head generally has concerns with the development of drive-through restaurants to include their appropriateness within various character areas within the town, including within the US Hwy 158 corridor and in Whalebone Character Area. As such, drive-through restaurants are currently only permitted via the special use permit process in the C-2, General Commercial District as a standalone principal structure.

Based upon the staff analysis above, staff would continue to recommend denial of the proposed text amendment to allow drive-through restaurants as an acceptable use within commercial mixed-use developments, including shopping centers.

PLANNING BOARD RECOMMENDATION

The Planning Board heard this request at their October 17, 2023, meeting and voted unanimously to recommend denial of the text amendment as proposed.

(DRAFT)
**AN ORDINANCE AMENDING THE TOWN CODE AND UNIFIED DEVELOPMENT ORDINANCE
OF THE TOWN OF NAGS HEAD, NORTH CAROLINA AS IT PERTAINS TO THE USE
“RESTAURANT, DRIVE-THROUGH”**

ARTICLE I. Purpose(s) and Authority.

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

WHEREAS, Section 2.4.4.3 of the Unified Development Ordinance provides that the powers and duties of the Planning Board include developing and recommending policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;

WHEREAS, Section 3.5.1. of the Town Code makes clear that a zoning ordinance text amendment may be initiated by motion of the Board of Commissioners, by motion of the Planning Board, or by application by any person within the zoning jurisdiction of the Town;

WHEREAS, a text amendment application has been submitted requesting consideration be given to allowing the use “Restaurant, Drive-Through” within Commercial Mixed-Use Developments and the supplemental regulations associated with drive-through restaurants be amended; and

ARTICLE II. Construction.

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

ARTICLE III. Amendment of the Unified Development Ordinance.

PART I. That **Section 7.29, Supplemental Regulations for Restaurant, Drive-Through**, be amended as follows:

Section 7.29 - Restaurant, Drive-Through.

Restaurant, drive-through, is 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:

7.29.1. In addition to the buffering requirements of Section 10.93, Landscaping, Buffering, and Vegetation Preservation, the site shall be buffered from all adjacent properties utilizing a 10-foot wide Commercial Transitional Protective Yard as prescribed in Section 10.93.

7.29.2. The drive-through restaurant must be situated in a retail shopping center development which (a) consists of at least twenty (20) acres of land with frontage on the US 158 right-of-way, (b) has signalized access to and from US 158, and (c) the structure with a drive-through is less than 3,000 square feet. The Town Board may, in its discretion, approve an alternative

site layout with the front of a drive-through restaurant located in the C-2, General Commercial District on US 158 oriented differently (i.e., front façade not facing US 158) as part of the Special Use Permit process.

7.29.3. Where the front façade of the restaurant with drive-through is not oriented toward US Hwy 158, the Town Board of Commissioners may approve such alternative site layout provided that the buffer yard requirements set forth in Section 10.93 of the UDO are satisfied.

PART II. That **Section 7.32, General Provision for Commercial Mixed-Use Designations**, be amended as follows:

7.32.3. Service.

- Personal Service.
 - ° Group Fitness - Aerobics/Dance/Karate/Yoga.
 - ° Hair Salon.
 - ° Indoor Fitness/Gymnasium.
 - ° Massage Therapy Center.
 - ° Metaphysical Wellness Services.
 - ° Spa.
- Food Service
 - ° Coffee Shop/Juice Bar.
 - ° Ice Cream Shop
 - ° Microbreweries
 - ° Restaurant, Neighborhood
 - ° Restaurant, Sit Down
 - ° Restaurant, Take Out
 - ° Restaurant, Drive-Through

PART III. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. This ordinance shall be in full force and effect from and after the ____day of ____2023.

Benjamin Cahoon, Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

Date adopted: _____

Motion to adopt by Commissioner _____

Motion seconded by Commissioner _____

Vote: _____ AYES _____ NAYS

Unified Development Ordinance (UDO) Text Amendment ☐ \$750
Zoning Map Amendment ☐ \$750 +
\$500/acre or fraction thereof

UNIFIED DEVELOPMENT ORDINANCE TEXT/
ZONING MAP AMENDMENT APPLICATION
TOWN OF NAGS HEAD, NORTH CAROLINA

Applicant SRE Mustang, LLC

Mailing address 7100 S. Croatan Highway, Ste 45, Nags Head, NC 27959

Explanation of request

☒ Unified Development Ordinance (UDO) - Section(s) 7.29
Attach amendment in ordinance form.

☐ Zoning Map

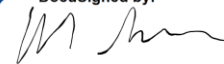
Attach copy of current Zoning Map with affected property outlined in red.
Attach names and mailing addresses of the property owners of all parcels of land
abutting the parcel in question.

Nature of request

See attached proposed text amendment to UDO Section 7.29

Reason for request

Applicant seeks an amendment to allow development of a portion of the property as a Starbucks coffee shop with a drive-through

DocuSigned by:

2793C57808CD4C1...

Applicant

9/11/2023

Date

- **Section 7.29 - Restaurant, Drive-Through.**

Restaurant, drive-through, is 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:

7.29.1. In addition to the buffering requirements of Section 10.93, Landscaping, Buffering, and Vegetation Preservation, the site shall be buffered from all adjacent properties utilizing a 10-foot wide Commercial Transitional Protective Yard as prescribed in Section 10.93.

7.29.2. The drive-through restaurant must be situated in a retail center which (a) consists of at least twenty (8) acres of land with frontage on the US 158 right-of-way, (b) has signalized access to and from US 158, and (c) the structure with a drive-thru is less than 3,000 square feet. The Town Board may, in its discretion, approve an alternative site layout with the front of a drive-through restaurant located in the C-2 Commercial District on US 158 oriented differently (i.e., front façade not facing US 158) as part of the special use permit process.

7.29.3. Where the front façade of the restaurant with drive-thru is not oriented toward the US 158, the Town Board may approve such alternative site layout provided that the buffer yard requirements set forth in UDO Section 10.93 are satisfied.

Section 7.32.4

7.32.4 – add “restaurant, Drive-through” as an allowable use for the “food service” category in the Commercial Mixed-Use designation.

Focus Nags Head

Advisory Committee Meeting

12/8/16

Attendees: Ben Cahoon, Molly Harrison, Kate Jones, Dorie Fuller, John Juzwiak, Margaret Suppler, Andy Garman, Holly White, Kelly Wyatt

The FOCUS Advisory Committee convened at 1:00 pm. Staff briefly recapped the last meeting and discussion moved to Historic Community Character area.

Staff briefly reviewed the description and development plan for the Historic Character Area contained in the draft plan and based in previous input from the committee. Staff made a brief presentation on the material in the draft plan for the Historic area including the overall vision and development plan. The committee then discussed the importance of architecture in this area and suggested that the plan more deeply describe the desired character. They further noted that in the future we may need to develop tools or “yardsticks” to measure and test the proposed development plan in order to gain the desired outcomes. The committee discussed the current process for architectural review and how that could be strengthened. The committee indicated that there has to be confidence in the review and approval process for commercial structures. They felt that commercial development should not be a cookie cutter process and that every situation was unique. The committee asked staff to include provisions to reexamine and improve the site plan review process for commercial. They pointed to Tybee Island, GA, Southport, and Duck as possible examples. Their main desire for this character area was to protect the character of the old Nags Head style.

With no further discussion on the Historic Character area, staff made a presentation on Significant Natural areas. The committee discussed their desire for these areas to remain protected but continue to allow for the maintenance of existing municipal uses. They further discussed the importance of the protecting Fresh Pond. While they felt it was ok to allow passive, natural recreation in this area, they wanted to ensure that the area did not become open to more active types of recreation or parking facilities.

Next, staff presented a brief presentation on S. Nags Head and its overall vision and development plan outlined in the draft plan. The committee suggested removing the second action, “Consider re-designating the northernmost C-2 area in South Nags Head (15 northernmost lots west of SR 1243) to residential due to its transition to residential development” indicating that the Relax Inn was located here. The committee felt that the remaining portions of the plan for this character area were ok.

Staff made another presentation about the Corridors Character Area and the desired vision and development plan. The committee discussed drive through window type service and the appropriateness of their location in Town. While some committee members fundamentally did not have an issue with drive-throughs, there was some concern that this opened the town to more mainstream, chain type development. The committee reflected on their previous discussion about commitment to the local business community, sense of place, and quality of life associated with local



businesses. Based on this discussion, the committee requested that staff amend the US 158/US 64 uses to reflect sit down or walk up restaurants only. They also requested that this be carried forward in future sections of the plan.

With no other comments or discussion the committee adjourned at 3:00 pm.



**TOWN OF NAGS HEAD
BOC ACTIONS
JANUARY 3, 2024**

1. Call to order - Mayor Cahoon called the meeting to order at 9 a.m. He recognized the following in attendance: former Mayor Bob Muller, former commissioners Anna Sadler and John Ratzenberger, former Town Manager/commissioner Webb Fuller, and former Dep Town Clerk Michelle Gray.
2. Agenda – the Board adopted the January 3rd agenda as presented.
3. Recognition - New Employee –New Water Billing Specialist Shannon Beatty was welcomed by the Board.

Recognition of former Comr. Renée Cahoon

Mayor Cahoon introduced former Comr. Renée Cahoon who was present with her family and friends as she received Board recognition of her many years of public service.

A video honoring Ms. Cahoon with various officials that worked with her over the years highlighting their experiences serving with her was presented. Mayor Cahoon read the remarks from Braxton Davis, Director of Marine Fisheries, who was unable to attend today's meeting. Others spoke concerning Ms. Cahoon providing their positive and sometimes humorous experiences with the former commissioner; Individual Board members spoke of their time working with Ms. Cahoon and pointing out all she has done for the Town; on behalf of the staff, Town Manager Garman thanked her for bringing those less visible in the community for recognition.

Ms. Cahoon thanked everyone for their support over the years, especially her family who has been very supportive and tolerant; she has loved the Town for many decades and is looking forward to the future.

On behalf of the Board, Mayor Cahoon presented to Ms. Cahoon a painting by Marcia Cline and the Governor's Long Leaf Pine Award which was followed by a brief video presentation by Governor Roy Cooper.

4. Recess/Reconvene – the Board took a brief recess at 9:40 a.m. and reconvened at 9:50 a.m.
5. Public Comment - Duke Geraghty, representing the Outer Banks Homebuilders Association; he spoke concerning the Public Hearing, scheduled for the February meeting, re: multi-family ordinance; he asked Board members to look closely at the ordinance - he would like to simplify the ordinance in order to allow housing for employees; he also thanked the Board for what has been done for former Comr. Renée Cahoon today.
6. Consent Agenda – the Consent Agenda was approved as presented and consisted of the following:
 - Budget Amendment #7 to FY 23/24 Budget / Tax Adjustment Report / Approval of minutes
 - Resolution to accept the American Rescue Plan Act grant offer for Stormwater Master Plan Update
 - Consideration of modification to Pay Plan / Consideration of annual audit contract
 - Request for Public Hearing – re: construction of a Trade Center for lot behind TW's Bait and Tackle
 - Request for Public Hearing – to consider UDO text amendments re: multi-family development
7. Planning Director – The Planning Director presented her monthly report.
8. Public Hearing – to consider text amendments to the Unified Development Ordinance as it pertains to the use of "Restaurant, Drive Through" as a permissible use within Commercial Mixed-Use Developments, as

well as amending the supplemental regulations associated with this use – several people spoke in opposition to the proposed text amendments. The Board passed a motion to deny the proposed text amendments. The motion passed 4 – 1 with Mayor Cahoon casting the NO vote.

9. Town Auditor - Emily Mills, partner with Potter & Co, presented the annual audit report for the Town for the year ending June 30, 2023. She issued an unmodified opinion – the highest level of compliance that can be issued. She pointed out that the Town's Finance Dept is preparing the responses concerning the two Financial Performance Indicators of Concern that are required to be submitted to the Local Government Commission within 60 days.

10. Emergency Operations Plan – Shanti Smith-Copeland of IParametrics presented the updated Town Emergency Operations Plan. She stated that she appreciated the amount of time staff put into preparation of their input for the Plan. Any questions or concerns can be submitted to Ms. Smith-Copeland until the end of January 2024 before Board consideration of the new Emergency Operations Plan in February.

11. Committee Reports

- Comr. Sanders - Estuarine Shoreline Master Plan – the grant was not received for the Plan and Comr. Sanders indicated that he has spoken to Manager Garman about options.

- Comr. Brinkley - Jennette's Pier Advisory Committee – He was unable to attend the December 11th meeting due to COVID but will forward minutes once received.

12. Appointments/Reappointments – the Board made the following unanimous appointments:

Government Education Access Channel Committee - The Board appointed Comr. Lambert.

Septic Health Advisory Committee – The Board appointed Planning Board member Gary Ferguson.

Firemen's Relief – The Board reappointed Anne Farmer to another term.

Board of Adjustment - The Board reappointed Bobby Gentry to another three-year term; Dru Ferrence as an alternate member; and Margaret Suppler and Bobby Gentry as Chair and Vice-Chair respectively.

13. Town Attorney - Attorney Leidy reported on the litigation filed by all municipalities against the Dare County Local Act (HB 592) – the State has received additional time to respond. He also confirmed that the Board was aware of the resolution adopted by the Dare County BOC yesterday where they stated they would not use House Bill 259 to exempt any workforce housing solution from local government zoning authority.

14. Town Manager – Engineer David Ryan provided an update on the Public Services Facility construction via a photo presentation; he is planning a tour of the site for the Board at the February meeting, as requested.

15. Mayor Pro Tem Siers – He thanked staff for putting together today's presentations on Renée Cahoon.

16. Mayor Pro Tem Siers – He thanked Dare County for adopting the resolution yesterday re: HB 259.

17. Mayor Pro Tem Siers – He brought up UDO amendments that would reflect the Land Use Plan.

18. Comr. Sanders - He thanked staff for the display of lights at Dowdy Park during the Christmas season.

19. Mayor Pro Tem Siers – It was Board consensus to ask the Planning Board to begin the process to amend the Unified Development Ordinance to reflect the Land Use Plan to prohibit drive-through restaurants and to also review other items of concern. Town Manager Garman stated that Planning Director Kelly Wyatt and her staff have been working on a list to this effect.

20. Adjournment - The Board adjourned at 11:10 a.m.



MEMORANDUM

Town of Nags Head

Planning & Development Department

To: Board of Commissioners
Planning Board

From: Kelly Wyatt, Planning Director
Joe Costello, Deputy Planning Director

Date: December 29, 2023

Subject: Planning and Development Director's Report (G-1)

This memo provides an overview of selected Planning and Development Department activities, projects, and initiatives. If requested, Staff will be prepared to discuss any of this information in detail at the Board of Commissioners meeting on January 3rd, 2024.

Monthly Activity Report

Attached for the Board's review is the *Planning and Development Monthly Report for November 2023*. In addition to permitting, inspections, code enforcement, and Todd D. Krafft Septic Health Initiative activities, Staff was involved in the following meetings or activities of note during the month:

- Tuesday, December 5th – Technical Review Committee Meeting
- Wednesday, December 6th - Board of Commissioners Meeting
- Thursday, December 7th - CRS Users Group Meeting
- Wednesday, December 13th – Committee for Arts and Culture Meeting
- Wednesday, December 13th – Strategic Plan Implementation Session
- Thursday, December 14th – Board of Adjustment Meeting (no hearings scheduled)
- Thursday, December 14th – Flashlight Candy Cane Hunt
- Wednesday, December 19th – Planning Board Meeting
- Wednesday, December 20th – Board of Commissioners mid-month meeting (if needed)
- Saturday, December 2nd & 9th from 9am – noon – Dowdy Park Holiday Markets

Planning Board - Pending Applications and Discussions

The Planning Board's most recent meeting was held on Tuesday, December 19th, 2023, and included the following:

- Consideration of Special Use/Site Plan Review for construction of a Trade Center on Lot 2a of Charles Sineath Subdivision, vacant lot behind TW's Bait and Tackle. The November 2, 2022 approval had expired. The Planning Board voted unanimously to recommend approval of the SUP/Site Plan as presented.
- Consideration of text amendments that if adopted would allow the long-term rental of units within existing hotels and motels. The Planning Board and applicant had productive discussion and staff will be returning to the January 2024 Planning Board meeting with an updated draft amendment based upon discussion.
- Consideration of various text amendments to the UDO as it pertains to multi-family development. The Planning Board completed a thorough review of the draft amendments,

and requested some minor revisions that will now be provided to the Town Attorney for review. The Planning Board voted unanimously to go ahead and move the amendments forward in order to schedule the Public Hearing before the Board of Commissioners at their February 7th, 2024 meeting.

- Consideration of text amendments related to the use of Drive-Through Restaurants within Commercial Mixed-Use Developments and to discuss a conflict in the Unified Development Ordinance and Comprehensive Land Use Plan. The Planning Board discussed this item again and upheld their original recommendation for denial of the text amendment as it related to the allowance of drive-through restaurants within commercial mixed use developments including shopping centers. Additionally, the Planning Board recommended that the conflict noted between the UDO and Comprehensive Land Use Plan be rectified by eliminating the use of drive-through restaurants within the C-2, General Commercial zoning district.

The Planning Board's next meeting is scheduled for January 16th, 2024. At this time, the agenda is expected to include consideration of a text amendment to allow the long-term rental of units within existing hotels and motels, and consideration of a proposed text amendment requiring that septic systems and all other components have a barrier around it to prevent vehicles from parking on top of it. Staff will also update the Planning Board on any revisions requested by the Town Attorney on the proposed multi-family development amendments.

Board of Adjustment – Pending Applications

There were no items for Board of Adjustment consideration in December 2023. At their January 11, 2024 meeting the Board of Adjustment is expected to hear an Appeal of an Administrative Decision submitted by Joseph Surles with regard to the issuance of a building permit for the property located at 4313 W. Soundside Road, Nags Head (Martin Residence).

Additional Updates

- **DWMP/Septic Health Advisory Committee** – Over the course of two days in early December, Environmental Planner Conner Twiddy and a representative from OTT HydroMet installed 14 groundwater level loggers and 2 water quality loggers throughout the Town as recommended in the recent Decentralized Wastewater Master Plan. The loggers will soon be calibrated and sending real-time ground water and water quality data to the town.



- **Electric Vehicle Action Plan** – Staff are currently working with Daniel Parsons of LoWire Technologies to finalize a quote for the acquisition, installation, and future maintenance of the EvoCharge equipment. Staff is also working to identify contractors to construct ADA accessible parking spaces and to fabricate and install signage in accordance with the DEQ grant requirements. Staff will continue to update on this item.
- **Sand Relocation and Dune Management Cost Share Program** – Staff will provide updated information on this item at the January 3rd, 2024, meeting.
- **Dowdy Park Events/Farmers Market/Holiday Markets/Art & Culture** – The 2nd Annual Flashlight Candy Cane Hunt was well attended this year and many parents expressed their appreciation for the festive holiday cheer it and the Dowdy Park lighting brought. Kenneth and Kathleen Morgan were the winners of the Holiday Decorating Contest. Event Coordinator Paige Griffin has begun preparing for the upcoming Winter Markets. These markets will be held on the 2nd Saturday of January - April, from 9am – noon at Dowdy Park. These markets are open to producer/consumable vendors only.

Upcoming Meetings and Other Dates

- Tuesday, January 2nd - Technical Review Committee Meeting (no items)
- Wednesday, January 3rd - Board of Commissioners Meeting
- Thursday, January 4th - CRS Users Group Meeting
- Wednesday, January 10th – Committee for Arts and Culture Meeting
- Thursday, January 11th – Board of Adjustment Meeting (Surles Appeal)
- Saturday, January 13th – Winter Market from 9am – noon
- Tuesday, January 16th – Planning Board Meeting
- Wednesday, January 17th – Board of Commissioners mid-month meeting (if needed)



**TOWN OF NAGS HEAD PLANNING AND DEVELOPMENT
MONTHLY REPORT
NOVEMBER 2023**

DATE SUBMITTED: December 7, 2023

	Nov-23	Nov-22	Oct-23	2023-2024 FISCAL YTD	2022-2023 FISCAL YTD	FISCAL YEAR INCREASE/ DECREASE
BUILDING PERMITS ISSUED - RESIDENTIAL						
New Single Family	4	1	2	8	7	1
New Single Family, 3000 sf or >	0	0	0	3	5	(2)
Duplex - New	0	0	1	1	0	1
Sub Total - New Residential	4	1	3	12	12	0
Miscellaneous (Total)	54	46	43	186	175	11
<i>Accessory Structure</i>	3	2	5	15	15	0
<i>Addition</i>	3	1	6	17	8	9
<i>Demolition</i>	3	0	0	3	0	3
<i>Move</i>	0	0	0	0	0	0
<i>Remodel</i>	15	17	5	40	52	(12)
<i>Repair</i>	30	26	27	111	100	11
Total Residential	58	47	46	198	187	11
BUILDING PERMITS ISSUED - COMMERCIAL						
Multi-Family - New	0	0	0	0	0	0
Motel/Hotel - New	0	0	0	0	0	0
Business/Govt/Other - New	0	0	0	0	1	(1)
Subtotal - New Commercial	0	0	0	0	1	(1)
Miscellaneous (Total)	9	6	5	27	25	2
<i>Accessory Structure</i>	3	2	1	11	11	0
<i>Addition</i>	0	0	0	0	0	0
<i>Demolition</i>	0	0	0	0	0	0
<i>Move</i>	0	0	0	0	0	0
<i>Remodel</i>	2	2	2	9	7	2
<i>Repair</i>	4	2	2	7	7	0
Total Commercial	9	6	5	27	26	1
Grand Total	67	53	51	225	213	12
SUB-CONTRACTOR PERMITS						
Electrical	39	40	33	209	211	(2)
Gas	6	5	2	21	13	8
Mechanical	20	27	20	134	165	(31)
Plumbing	14	10	14	54	33	21
Fire Sprinkler	0	0	1	2	2	0
VALUE						
New Single Family	\$1,775,000	\$582,000	\$710,000	\$3,859,282	\$3,284,000	\$575,282
New Single Family, 3000 sf or >	\$0	\$0	\$0	\$1,135,000	\$4,960,000	(\$3,825,000)
Duplex - New	\$0	\$0	\$711,000	\$711,000	\$0	\$711,000
Misc (Total Residential)	\$2,561,700	\$2,068,942	\$2,089,946	\$7,750,223	\$6,662,384	\$1,087,839
Sub Total Residential	\$4,336,700	\$2,650,942	\$3,510,946	\$13,455,505	\$14,906,384	(\$1,450,879)
Multi-Family - New	\$0	\$0	\$0	\$0	\$0	\$0
Motel/Hotel - New	\$0	\$0	\$0	\$0	\$6,425,994	(\$6,425,994)
Business/Govt/Other - New	\$0	\$0	\$0	\$0	\$0	\$0
Misc (Total Commercial)	\$962,286	\$311,970	\$582,425	\$2,124,931	\$1,002,751	\$1,122,180
Sub Total Commercial	\$962,286	\$311,970	\$582,425	\$2,124,931	\$7,428,745	(\$5,303,814)
Grand Total	\$5,298,986	\$2,962,912	\$4,093,371	\$15,580,436	\$22,335,129	(\$6,754,693)

**TOWN OF NAGS HEAD PLANNING AND DEVELOPMENT
MONTHLY REPORT
NOVEMBER 2023**

DATE SUBMITTED: December 7, 2023

	Nov-23	Nov-22	Oct-23	2023-2024 FISCAL YTD	2022-2023 FISCAL YTD	FISCAL YEAR INCREASE/ DECREASE
ZONING						
Zoning Permits	70	49	63	251	186	65
Soil & Erosion	2	N/A	2	7	N/A	N/A
Stormwater Plans	5	N/A	2	16	N/A	N/A
CAMA						
CAMA LPO Permits	3	2	4	17	12	5
CAMA LPO Exemptions	3	4	4	17	11	0
Sand Relocations	47	16	0	47	16	N/A
CODE COMPLIANCE						
Cases Investigated	24	20	39	146	238	(92)
Warnings	4	8	6	17	53	(36)
NOVs Issued	20	10	33	129	64	65
Civil Citations (#)	0	0	0	1	10	(9)
Civil Citations (\$)	\$0	\$0	\$0	\$0	\$23,150	(\$23,150)
SEPTIC HEALTH						
Tanks inspected	11	12	8	62	51	11
Tanks pumped	8	12	5	56	45	11
Water quality sites tested	2	2	1	64	117	(53)
Personnel Hours in Training/School	109	0	46	250	62	188


Kelly Wyatt, Planning Director