



MEMORANDUM

Town of Nags Head

Planning & Development Department

To: Board of Commissioners

From: Kelly Wyatt, Deputy Planning Director
Michael Zehner, Director of Planning & Development
Holly White, Principal Planner

Date: July 17, 2020

Subject: Consideration of numerous minor text amendments to the Unified Development Ordinance for clarification and to correct identified typographical errors.

OVERVIEW

Since the Planning Board's February 18, 2020 meeting where you reviewed and made a recommendation on the first iteration of post-Unified Development Ordinance adoption typographical errors, staff has identified several additional areas for correction or improvement of the UDO. The proposed amendment and a brief description of the request is included below.

Correction to the Post-Firm Definition

The Flood Damage Prevention Ordinance Ordinance, adopted by the Board of Commissioners on June 3, 2020 contained an error within the definition of "Post-FIRM". The Post-FIRM date is cited as being December 31, 1974. The Pre-FIRM date is cited as being November 10, 1972. Both dates should be November 10, 1972. The December 31, 1974 date had previously been provided to the town as the correct Post-FIRM date from FEMA, however we have since been directed to utilize the November 10, 1972 date. We have received direction that the November 10, 1972 is relevant for floodplain purposes; the December 31, 1974 date is relevant for insurance purposes.

Correction to Section 3.5.3.3, Action by Planning Board, to correct a typographical error "matter".

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

Correction to Section 4.12.2.1, Specific Site Plan Requirements Based on the Proposed Activity, Stormwater Management.

This section of the UDO had not yet been revised with the updated information from the December 5, 2018 approval of various stormwater management amendments.

Correction to Section 6.2.4.1, Zoning Districts, Commercial Districts, to correct a typographical error, “as”.

The second to last sentence should read, “It is also the intent of this C-1 district to encourage the development of unique, locally owned businesses that are designed to be reflective of the community's heritage and lifestyle both in scale and massing as well **as** site layout”.

Correction of strike-through typo’s in Section 6.6, Table of Uses and Activities as well as to clarify no supplemental standards listed for Government Administrative Office use.

Two (2) uses within Section 6.6 Table of Uses and Activities contain strikethrough of unnecessary text, this was unintentional and simply a carry over from a “mark-up” version.

Additionally, the use of “Government Administrative Office” contains a notation that supplemental standards are required and located within Section 7.42 of the UDO. This is in error, this use does not have supplemental standards associated with it and as such we are recommending the Table of Uses and Activities be amended to reflect that.

Correction to Section 8.3.1.5, Special Development Standards, C-3 Commercial Services District, to correct a typographical error, “pollution as”.

The first sentence should read, “No outside storage of processed materials, which may be a possible source of **pollution as** determined by the NC Department of Environmental Quality, shall be allowed”.

Correction to Section 10.24.2, Signs Permitted in Commercial Districts and the Commercial/Residential District, to include flag (non-advertising, non-informational) regulations that were inadvertently deleted during the adoption of the UDO.

Prior to the adoption of the Unified Development Ordinance, Chapter 48, *Zoning*, of the Code of Ordinances, contained various use regulations within the definition of the use. Listing use regulations within the definition of the use is not considered to be an ideal regulatory practice, and as such, during the drafting of the UDO, Staff attempted to move those regulations into the Supplemental Standards for the appropriate use. In the process, the spacing requirement for “Flag (non-

advertising, non-informational)" which had previously been part of the definition, did not make it into the appropriate section of the UDO. This was inadvertently lost during the drafting process; this amendment would simply add the spacing requirement back into the use requirements.

STAFF RECOMMENDATION

Staff recommends that the amendments be adopted as proposed.

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

3.5.3. Action by the Planning Board.

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

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

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

It may also be helpful to the Planning Board to review the following provisions regarding action by the Board of Commissioners:

3.5.4. Action by the Board of Commissioners.

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

3.5.4.1. Before an item is placed on the consent agenda to schedule a public hearing, the Planning Board's recommendation on each proposed amendment must be received by the Board of Commissioners. If no recommendation is received from the Planning

Board within 30 days from the date when submitted to the Planning Board, the petitioner may take the proposal to the Board of Commissioners without a recommendation from the Planning Board. However, the Planning Board may request the Board of Commissioners to delay final action on the amendment until such time as the Planning Board can present its recommendations. No such limitations shall apply to applications or requests submitted by Town staff or any Town Board.

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

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

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

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

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

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

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

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

request or application for amendment to the Comprehensive Plan.

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

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

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

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

Attachments:

1. Draft Ordinance to clarify and address identified typographical errors within the UDO.

(DRAFT)
**AN ORDINANCE AMENDING THE CODE OF ORDINANCES
OF THE TOWN OF NAGS HEAD, NORTH CAROLINA TO CLARIFY AND CORRECT
IDENTIFIED TYPOGRAPHICAL ERRORS WITHIN THE UDO.**

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160A-381, 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. 160A, Art. 19 et. seq, 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. § 160A-363, which allows the Town to combine certain land development ordinances into a unified ordinance; and

WHEREAS, following adoption of the Unified Development Ordinance, Planning Staff has identified several unintended errors within the text of the Ordinance, necessitating amendment to correct; and

WHEREAS, the Town of Nags Head 2017 Comprehensive Plan includes goals and policies aimed at maintaining a well-run and efficient government that provides high quality and cost-effective services through good governance in order to advance the Town’s vision; and

WHEREAS, the Board of Commissioners finds that these text amendments are consistent with the goals, objectives and policies of the Town’s adopted Comprehensive Plan, and that this action is reasonable and in the public interest, and is in the interest of and not contrary to the public’s health, safety, morals and general welfare for the Town to amend the Towns Unified Development Ordinance as stated below.

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 ellipses (“...”) shall remain as they currently exist within the Town Code.

ARTICLE III. Amendment of the Unified Development Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Town of Nags Head, North Carolina, that the Unified Development Ordinance of the Town Code shall be amended as follows:

PART I. That the **definition of Post-FIRM as contained in Appendix A. Definitions, of the Unified Development Ordinance**, be amended as follows:

Post-FIRM means construction or other development for which the start of construction occurred on or after ~~December 31, 1974~~ November 10, 1972, the effective date of the initial Flood Insurance Rate Map.

PART II. That **Section 3.5.3.3, Action by the Planning Board, of the Unified Development Ordinance**, be amended as follows:

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

PART III. That **Section 4.12.2.1, For All Types of Development Activity, of the Unified Development Ordinance**, be amended as follows:

4.12.2. Specific Site Plan Requirements Based on the Proposed Activity.

4.12.2.1 For All Types of Development Activity.

- Site plan/survey
 - Property information- address, ownership, lot number/map book/page reference
 - Existing and proposed development including but not limited to streets, topographic and natural features, and drainage
- Coastal Area Management Act (CAMA) Permit.
- Wastewater approval from Dare County Health Department or NC Department of Environmental Quality.
- Erosion control approval is issued with general development for projects disturbing more than 5,000 square feet (see Article 11, Part II).
- Flood (if in a Special Flood Hazard Area, Shaded X, or X Zone, see Article 11, Part III).
- Stormwater management (~~for projects which propose filling greater than one foot or for all new commercial construction, see Article 11, Part I~~ as required by Article 11, Part I, for projects involving, but not limited to, commercial, mixed use, and multi-family development or redevelopment, new detached single-family and duplex residential properties, existing single-family and duplex residential properties where more than 500 square feet of new built-upon area is being added, and/or the removal or replacement of driveways).
- Architecture (for residential structures greater than 3,500 square feet, see UDO Section 7.4, Dwelling, Large Residential)
- Utility connections (see Town Code Chapter 44).
- Any other State or Federal Permits

PART IV That **Section 6.2.4.1. C-1 Neighborhood Commercial District of the Unified Development Ordinance**, be amended as follows:

6.2.4.1. C-1 Neighborhood Commercial District. The C-1 neighborhood commercial district is intended to accommodate neighborhood scale, pedestrian-oriented development that serves the needs of the immediate residential neighborhoods with an emphasis on expanding neighborhood commercial activities

along NC 12. The purpose of this district is to provide needed goods and services within walkable distances to residential neighborhoods. Development must be designed in use, scale, character, and intensity to be compatible with and protect surrounding residential areas, natural resources, and scenic viewsheds. Activities such as shopping, strolling, and dining are leisure activities as much as other needed services. Typical uses in this designation include restaurant (walk-up or sit down), commercial, office, retail, personal services establishments, gallery/museum, beach equipment rentals, cottage courts, hotels, and single-family residential (5,000 square feet or less). Commercial development should be designed to activate the street fronts, encourage walkability, and be situated closer to street grade while still elevated to minimize flood risk. It is also the intent of this C-1 district to encourage the development of unique, locally owned businesses that are designed to be reflective of the community's heritage and lifestyle both in scale and massing as well as site layout. This could include the use of accessory residential dwelling units to commercial businesses or other arrangements of mixed use that are designed to be pedestrian oriented and in close proximity to one another.

PART V. That **Section 6.6. Table of Uses and Activities, of the Unified Development Ordinance**, be amended as follows:

| Use Category/Class | Use Type |
|--------------------|---------------------|
| Residential | Cluster Housing |
| Residential | Cottage Courts |
| Residential | Dwelling, Accessory |

| Use/Category/Class | Use Type | R-3 | Supplemental Regulations |
|--------------------|------------------------------------|-----|--------------------------|
| Institutional | Governmental Administrative Office | PS | <u>Section 7.42</u> |

PART VI. That **Section 8.3.1.5. C-3 Commercial Services District of the Unified Development Ordinance**, be amended as follows:

Section 8.3 Special Development Standards – Primary Zoning Districts

8.3.1. C-3 Commercial Services District.

8.3.1.5. No outside storage of processed materials, which may be a possible source of pollution as determined by the NC Department of Environmental Quality, shall be allowed. Processed materials would include, but not be limited to, chemically treated lumber, or petroleum-based products which when exposed to the elements could create stormwater runoff containing pollutants. Areas devoted to the outside storage of materials shall be maintained permeable and shall be calculated as permeable lot coverage. These areas shall be clearly delineated on the site plan, and any expansion of such areas shall be considered a site modification for which approval by the Board of Commissioners is required.

PART VII. That **Section 10.24.2.7. Signs Permitted in Commercial Districts and the Commercial/Residential District, of the Unified Development Ordinance**, be amended as follows:

10.24.2.7. One (1) flag sign shall be permitted in accordance with the specifications listed in the definition for flag sign as described in Appendix A Definitions.

10.24.2.8. Flag signs (non-advertising, non-informational), as defined, shall be permitted, with no more than one flag for every 20 linear feet of street frontage.

10.24.2.8~~9~~. Outdoor stands shall be allowed one (1) temporary sign attached to the stand. Such sign shall not exceed fifteen (15) square feet in area or extend above the roof of the stand. This sign area shall be exempt from the calculation of total commercial site sign area limitations imposed by this subsection.

PART VIII. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. This ordinance amendment shall be in full force and effect upon the date of adoption by the Board of Commissioners.

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