



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: August 25, 2020

Subject: Consideration of numerous minor text amendments to the Unified Development Ordinance for clarification and to correct identified typographical errors. (Attachment F-2)

OVERVIEW AND BACKGROUND

Since the Board of Commissioners meeting on May 6, 2020 where the first iteration of post-Unified Development Ordinance adoption typographical errors was adopted, Staff has identified several additional areas for correction and/or improvement of the UDO. The proposed amendments and a brief description of each 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 incorrect date within the definition of "Post-FIRM". The Post-FIRM date is cited as being December 31, 1974, and 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 an 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, was not carried 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.

PLANNING BOARD RECOMMENDATION

At their July 21, 2020 meeting the Planning Board voted unanimously to recommend approval of the proposed text amendments as proposed.

With regard to the Board of Commissioner'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 mater being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

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.