



MEMORANDUM

Town of Nags Head

Planning & Development Department

To: Board of Commissioners
From: Kelly Wyatt, Planning Director
Date: Updated March 9, 2023
Subject: Consideration of UDO and Town Code text amendment requests pertaining to the Historic Character Area and the moratorium adopted on October 19, 2022.

Updated Staff Report for Board of Commissioners March 15, 2023 Meeting

At their March 1, 2023 meeting, having heard the presentation from planning staff and receiving valuable public comment from numerous property owners, the Board of Commissioners tabled action on the proposed Historic Character Area amendments and requested that planning staff return to their March 15, 2023 mid-month meeting with the requested updates incorporated into ordinance form. The following proposed updates have since been incorporated into the draft ordinance for Board of Commissioners consideration:

- Amendments to Section 5.6, Nonconforming Use of a Structure
 - Revised language to ensure that any nonconforming use within the Town, should it be destroyed or otherwise modified by any means, may be repaired, maintained, or replaced with an identical or similar structure and use, regardless of value, provided the repair, maintenance or replacement does not increase the degree of structural or use nonconformities.
 - Language has been added to ensure that site improvements such as parking, stormwater management, landscaping, etc. may occur on a property which contains a nonconforming use, however the improvements must meet the site design standards and dimensional requirements applicable to such improvements established by the current Unified Development Ordinance.
 - Elimination of the language restricting work being done on a nonconforming structure with a nonconforming use to 50 percent of the assessed tax value of the structure within a 12 consecutive month time frame.

- Amendments to Section 6.6, Table of Uses and Activities
 - The following uses are now recommended to be allowed within the C-5, Historic Character Commercial Zoning District, definitions have been included also.
 - ❖ **Convenience Store** means a retail store that provides the public with a convenient location to purchase a variety of primarily packaged consumable products, generally food, beverages, and other household supplies. A convenience store is often found in conjunction with a fueling station.

- ❖ **Dormitory** means a commercial facility used for monthly rental housing of unrelated residents in a communal non-transient living arrangement. The facility shall consist of separate sleeping, bathing, and common living areas.
- ❖ **Fueling Station** means retail place of business operated for the purpose of storing and dispensing motor vehicle fuel to the general public.
- ❖ **Group Development** means a group of buildings on a single site which are occupied and used for professional offices, retail, personal services, indoor recreation facilities, and/or restaurant uses.
- ❖ **Indoor Public Assembly** means a facility designated for multiple activities. The allowed activities may include conferences, conventions, concerts, private parties, catered meals, and general retail in the form of craft fairs, food fairs and indoor flea markets.
- ❖ **Mixed Use Development** means a single building containing more than one type of land use or single development of more than one building, and use, under common ownership, where the different types of land uses are in close proximity, planned as a unified complementary whole, and functionally integrated to the use of shared vehicular and pedestrian access and parking areas. Mixed use is defined by a combination of professional offices, personal services, indoor recreation facilities, retail, and/or restaurant uses in combination with residential development.
- ❖ **Shopping Center** means a single, commercial structure which includes or is designed to include two or more establishments with a combined floor area of at least 10,000 square feet planned for a single or contiguous lot.

Please note that the uses “Convenience Store” and “Fueling Station” are not currently defined in Appendix A of the Unified Development Ordinance. The definition for these two uses shown above are included as part of the proposed text amendments for Board of Commissioner consideration.

- The method by which each use is permitted within the C-5, Historic Character Commercial Zoning District has been revised to be consistent with method in which it is allowed within the C-2, General Commercial Zoning District.
- Amendments to Section 8.2, Development Standards for Primary Zoning Districts to increase the maximum allowable lot coverage to 45% of the total lot area with the ability to increase it to 55% of the total lot area with the use of permeable materials. This includes the footnote reference in Section 8.6.6.4, Special Requirements as well as Section 7.45.1, Lot Coverage allowances for Religious Complex within the C-5 District.
- Amendments to Section 7.20, Supplemental Regulations for Fueling Stations to include the following conditions for fueling stations located within the C-5 District:

- Fueling Stations shall have no more than four (4) fuel dispensers.
- No fueling station, with or without a convenience store, shall be constructed on a lot having frontage on NC 12.
- Convenience store use associated with a fueling station shall not exceed 3,500 square feet of habitable building area.

Additional amendments have been proposed to this use. Existing subsections 7.20.1. and 7.20.2. are conditions related to the use of automobile repair. While some fueling stations do offer automobile repair, not all of them do. There is a separate section within the UDO that addresses the supplemental regulations associated with “Automobile Repair” where the exact verbiage of sections 7.20.1. and 7.20.2. exists along with several other conditions. Staff has proposed to delete these two sections from the supplemental regulations for fueling stations not only for consistency purposes but to ensure that there is no implication that a fueling station is inherently permitted to offer automobile repair services.

- Amendments to Section 7.32, General Provisions for Commercial Mixed-Use Developments to clarify the types of uses that are considered commercial mixed-use developments and to clarify that if a use listed within Section 7.32 is not permitted within the zoning district in which it is being proposed, then it is subsequently not permitted within a commercial mixed-use development.
- Amendments to Section 8.3, Special Development Standards for Primary Zoning Districts:
 - Revised language to increase the proposed habitable building area for commercial structures fronting NC 12 from 3,500 square feet to 4,200 square feet. This is being proposed to ensure that existing commercial structures with attached accessory residential uses are not made nonconforming by this proposal. The proposed 4,200 square feet of habitable building area is consistent with habitable area allowed for dwellings within the Soundside Residential Overlay District, also a historically significant area within the Town.
 - Clarifying that the Board of Commissioners would only be required to make a finding that a proposed building design is reflective of the heritage of “Old Nags Head” and does not diminish the unique architectural character of the Nags Head Beach Cottage Row Historic District and surrounding properties when reviewing a Special Use Permit Request. Note that not all uses permitted within the C-5 District are permitted via Special Use Permit.
 - Eliminate the previously proposed language requiring new construction, additions of customer service area, customer waiting area, lot area and change of uses be reviewed via the Special Use Permit requirements.
- Amendments to Appendix A, Definitions to include the following:
 - **Convenience Store** means a retail store that provides the public with a convenient location to purchase a variety of primarily packaged consumable products, generally food, beverages, and other household supplies. A convenience store is often found in conjunction with a fueling station.

- **Fueling Station** means retail place of business operated for the purpose of storing and dispensing motor vehicle fuel to the general public.
- **Grocery Store** means a retail store that specializes in selling food, both fresh and prepackaged. A grocery store sells items such as fresh produce, meats, dairy, and/or bakery goods alongside canned, frozen and prepared foods. In addition, a grocery store will sell a full range of household, healthcare, and personal care items.

Included for the Board of Commissioners consideration are the attachments noted below:

Attachment A – Various draft text amendments within the Unified Development Ordinance and Town Code establishing the C-5, Historic Character Commercial District. This now includes the requested revisions from the March 1st BOC Meeting.

Attachment A continued – Various draft amendments outside of the UDO, within the Town Code generally, update for C-5 District. This is unchanged from the March 1st Meeting.

Attachment B – Staff has updated the chart listing the commercial businesses within the proposed area of the map amendment and how the proposed C-5, Historic Character Commercial District regulations would affect them in terms of use and habitable building area.

Attachment C – Article 5 of the Unified Development Ordinance, Nonconformities. This is unchanged from the March 1st Meeting; however, revised language is suggested in the amendments under consideration.

If you are interested in reading the staff report or viewing the attachments associated with the Board of Commissioners March 1st, 2023 meeting on this item you can access those documents [HERE](#).