



# MEMORANDUM

## Town of Nags Head

### Planning & Development Department

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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"

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#### **Updated Staff Report for Board of Commissioners January 3<sup>rd</sup>, 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 <b>Mixed Use</b> 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]**

J.A.f	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 (north end 011ly) 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  
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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  
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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.