



MEMORANDUM

Town of Nags Head

Planning & Development Department

To: Planning Board

From: Kelly Wyatt, Planning Director

Date: November 10, 2022; December 9, 2022, **Updated January 13, 2023**

Subject: Discussion of the Historic Character Area, Comprehensive Land Use Plan.

Updated Staff Report for Planning Board's January 17th, 2023 Meeting

At their December 13, 2022, meeting, the Planning Board received the second of three updates related to the Town's Zoning Map and its consistency with Town's Comprehensive Land Use Plan, particularly within the Historic Character Area.

Staff presented to the Planning Board a series of three (3) maps for their consideration. The first was the area of the moratorium mapped with the current zoning designations, the second map depicted the moratorium area with a C-1, Neighborhood Commercial zoning designation and the third map depicted the moratorium area with a combination of R-3, High Density Residential zoning and C-1, Neighborhood Commercial zoning designation. Staff discussed several other informative attachments including the relevant excerpts of the UDO related to the C-1 District, the uses that are currently permitted within the C-1 District, Dimensional Standards for each zoning district, and a listing of commercial businesses located within the moratorium area and potential nonconformities that may result from a rezoning to C-1, Neighborhood Commercial. After discussion on the proposed mapping, the consensus of the Planning Board was they preferred the option depicting the area of the moratorium with a combination of the C-1, Neighborhood Commercial zoning designation and R-3, High Density Residential zoning designation.

Planning staff and the Planning Board discussed possible text amendments that would be necessary to ensure that Section 6.6, Table of Uses and Activities, would reflect the intent of the Historic Character Area as stated within the Town's Comprehensive Land Use Plan. Noting the extent of text amendments that would be necessary, staff introduced the idea that the Planning Board could also give consideration to establishing a new zoning district, leaving the C-1, Neighborhood Commercial zoning district intact. The Planning Board expressed interest in this option. Planning Staff has now prepared a draft text amendment establishing a new zoning district, the C-5 Historic Character Commercial Zoning District for the Planning Boards consideration.

The draft ordinance attached for the Planning Boards review includes the following proposed amendments:

- Section 6.2.2, Zoning Districts Established, to include the proposed C-5, Historic Character Commercial District.

- Section 6.2.4, Commercial Districts, to include the C-5, Historic Character Commercial District and create a draft intent narrative, outlining the district's purpose.
- Section 6.6, Table of Uses and Activities to include the C-5, Historic Character Commercial District to propose which uses should be allowed within the proposed C-5 District. Note that due to the significant historical character of this area, staff has proposed that all commercial uses be reviewed via the Special Use Permit process so as to allow both the Planning Board and Board of Commissioners the ability review each application. Staff would like to receive input and guidance as to what revisions Planning Board members would like to see moving forward.
- Section 8.2, Development Standards – Primary Districts, to establish dimensional requirements for the proposed C-5, Historic Character Commercial District. Note that the proposed dimensional requirements are a hybrid of the dimensional requirements already in place for the R-3, High Density Residential, CR, Commercial Residential, and C-1, Neighborhood Residential Districts.
- Section 8.3, Special Development Standards, to add Section 8.3.2 which sets forth special commercial building design criteria for both new and existing commercial structures within the proposed C-5, Historic Commercial District. Additionally, this section recommends applying a maximum habitable building area based upon the lot's frontage on either NC 12 or US Highway 158.
- Section 10.82, Applicability of Commercial Design Standards to add the proposed C-5 District to those districts to which the design standards apply.

Staff recognize that there are numerous areas within the existing Town Code and Unified Development Ordinance where the proposed C-5, Historic Character Commercial District should be added for consistency. We will present a list of those areas at the January 17, 2023, meeting, however, what has been provided for consideration is the substantive portions of the necessary text revisions should the Planning Board be interested in pursuing the C-5, Historic Character Commercial District.

Attachments included for the Planning Boards consideration include:

Attachment A – Various draft text amendments within the Unified Development Ordinance establishing the C-5, Historic Character Commercial District.

Attachment B - A series of three (3) maps for the Planning Boards consideration:

- Existing Zoning Map. This map was provided at the Planning Board's November 2022 meeting and shows the existing zoning designations within the area of the moratorium.
- Option 1. This option depicts rezoning the entire area of the moratorium to C-5, Historic Character Commercial.
- Option 2. This option depicts the combination of rezoning the area of the moratorium to C-5, Historic Character Commercial and R-3, High Density Residential.

Attachment C – Revised chart compiled by staff listing all the commercial businesses located within the Historic Character Area and whether the use would be permitted within the C-5, Historic Character Commercial District as currently proposed. With the proposal to limit habitable building area to 3,500 square feet on lots adjacent to NC 12 and 10,000 square feet adjacent to US Highway 158, we have also noted whether the existing building conforms to the area limitations.

Attachment D – Article 5 of the Unified Development Ordinance, Nonconformities.

Attachment E – Publication from UNC School of Government re: Spot Zoning.

Staff will be available to participate in the discussion at the Planning Boards January 17th, 2023 meeting.

Staff Report from Planning Board's December 13th Meeting

At their November 10, 2022 meeting, the Planning Board received the first of three updates related to the Town's Zoning Map and its consistency with the Town's Comprehensive Land Use Plan, particularly within the Historic Character Area.

The Planning Board's primary focus and discussion centered around the current/existing zoning regulations, possible incompatible land uses and what would result to any nonconforming situations created as a result of any possible rezoning. The Planning Board also expressed interest in having more information on what protections could be in place for Historic Cottage Row.

Since the Planning Board last met, staff has developed additional materials for discussion and consideration. Additionally, staff has met with several property owners located in and around the area Historic Character Area.

When meeting with property owners within the Historic Cottage Row area, they conveyed strong support for having their properties rezoned from a commercial designation to a residential designation (letters attached). Staff also met with numerous property owners within the Old Nags Head Place Subdivision. It was the consensus among the attendees at that meeting that the Planning Board and Board of Commissioners give consideration to rezoning their properties and the neighboring properties from a commercial designation to a residential designation. Specifically, they were interested in the R-3, High Density Residential Zoning District, given that the area has been developed to the R-3 dimensional standards, despite it being zoned a mixture of R-3, High Density Residential, CR Commercial Residential and C-2, Commercial Services.

Several attachments are included in this packet for the Planning Board's consideration:

Attachment A includes relevant excerpts from the Unified Development Ordinance related to the C-1, Neighborhood Commercial Zoning District. As has been previously noted, this district has been established within the UDO but to date, it has not been mapped within the Town. When reviewing the Historic Character Area and the intent of the C-1 District you may find mapping this district to be useful. This attachment provides you with information on the intent of the C-1 District as well as the commercial design and building size standards for structures along the NC 12 corridor. Note that no building fronting a two-lane roadway section shall exceed ten thousand (10,000) square feet in area.

Attachment B is a copy of Section 6.6 of the Unified Development Ordinance, Table of Uses and Activities, outlining the uses are currently allowed within the C-1, Neighborhood Commercial Zoning District. Should the Planning Board recommend that any portion of the moratorium area be rezoned to C-1, Neighborhood Commercial, it will be imperative to review this table closely. We would like to engage the Planning Board in discussion of any uses they would recommend removing from the district and likewise, any uses they would recommend adding to the district.

Attachment C is a copy of Section 8.2 of the Unified Development Ordinance, Development Standards for Primary Zoning Districts. This attachment is useful to compare the dimensional standards required by each district. Of note, the dimensional standards of the C-1, Neighborhood Commercial District and the C-2, General Commercial Zoning District are the same. The existing zoning within the area of the moratorium is C-2, General Commercial. Should the Planning Board consider making a recommendation of rezoning to C-1, Neighborhood Commercial, it's important to know that standards such as lot area, lot width, setbacks and lot coverage would not differ from one district to another. The difference would be in what permissible uses, which is outlined in Attachment D.

Attachment D is a chart compiled by staff listing all the commercial businesses located within the Historic Character Area and whether the use would be permitted within the C-1, C-2, and/or residential districts. With building size being limited to 10,000 square feet within the C-1 District, we have also noted whether the existing building conforms to the area limitations of the C-1, Commercial Neighborhood District.

Attachment E is a series of three (3) maps for the Planning Boards consideration:

- **Existing Zoning Map**. This map was provided at the Planning Board's November 2022 meeting and shows the existing zoning designations within the area of the moratorium.
- **Option 1**. This option depicts rezoning the entire area of the moratorium to C-1, Neighborhood Commercial. You can utilize the information provided in Attachments A, B, C, D & F to understand how this would affect various properties.
- **Option 2**. This option depicts the combination of rezoning the area of the moratorium to C-1, Neighborhood Commercial and R-3, High Density Residential. At this time, staff believes this option demonstrates the most compatibility with the policies and goals of the Historic Character Area and the Neighborhoods Character Area.

Attachment F is a copy of the relevant portions of Article 5 of the Unified Development Ordinance as it pertains to the creation of nonconformities, what restrictions are imposed and what may be undertaken by any use or structure made nonconforming by any proposed rezoning.

Lastly, there has been discussion about the possible creation of a Historic Character Area Overlay District adjacent to Historic Cottage Row in an effort to delineate architectural considerations that would complement the character of the historical cottages. Staff has had initial conversations with the Town Attorney about what creating such an overlay would entail and will be prepared to discuss this in more detail with the Planning Board at the time of the meeting.

Staff will be available to participate in the discussion at the Planning Boards December 13th meeting.

Original Staff Report provided for Planning Boards November 15th Meeting

At their October 19, 2022 meeting the Nags Head Board of Commissioners adopted a moratorium on all non-residential developments located within the C-2, General Commercial Zoning District applicable to the areas from Danube Street north to Hollowell Street, between US Highway 158 and NC12. This moratorium is in place for 150 days as staff conducts a detailed review of the Town's Zoning Map and its consistency with the Town's

Comprehensive Land Use Plan. The moratorium document outlines the proposed schedule of actions to be taken over the course of the 150 days and the role of the Planning Board during this time. Planning staff will work alongside the Planning Board to provide research information, conduct analyses, complete community engagement activities, and recommend appropriate alternatives that may result. Note that any recommended ordinances or zoning map amendments will be forwarded to the Board of Commissioners for scheduling a public hearing at their February 1, 2023, regular meeting.

The area that the moratorium applies to has been categorized by the Town's Comprehensive Land Use Plan as the Historic Character Area. The development goal of this character area is to preserve and integrity of Jockey's Ridge and the Historic Cottage Row, which is a National Register Historic District consisting of 41 contributing homes along the oceanfront and two structures on the west side of NC 12. The excerpt of the Town Comprehensive Land Use Plan that speaks to the Historic Character Area is attached for your review. A key takeaway from this character area is that this area should consist of neighborhood scale, commercial/residential development patterns with single-family dwellings and neighborhood serving businesses consistent with the size and scale of the cottages in Historic Cottage Row. In review of the Historic Character Area, the identified appropriate land uses and density/intensity and design characteristics, staff would submit that the current C-2, General Commercial zoning is likely not appropriate for this area. Having read the parameters of the Historic Character Area, staff would like to initiate discussion with the Planning Board about what is the most appropriate zoning district(s) for this area. Included in this report is a map of the area subject to the moratorium, the current zoning designation as well as the existing land uses.

Potential districts for consideration of a more appropriate zoning designation include the R-1, Low Density Residential Zoning District, the R-2, Medium Density Residential Zoning District, the R-3 High Density Residential Zoning District and the C-1, Neighborhood Commercial Zoning District. The intent of each of these districts has been provided as an attachment for your review and consideration.

As you contemplate the area subject to the moratorium, the Historic Character Area and the various zoning designations that may be better suited, please keep in mind that there may not be a "one size fits all" approach to aligning this area with the identified goals of the Historic Character Area. Consideration may be given to rezoning this area to a single zoning designation or multiple zoning designations. For instance, should you find that the C-1, Neighborhood Commercial District aligns closely with stated goals of the Historic Character Area, however there is a need for pockets of a residential zoning designation, that can certainly be explored in more detail as we move forward. Likewise, should your review of the potential zoning designations and their developmental standards result in the need for text amendments to the Unified Development Ordinance, we would welcome that input as well and explore it further. We can also discuss the creation of an entirely new zoning district or overlay district should we determine that the existing options available to us are not adequate.

Please note that while you may find that there is a zoning district designation better suited for this area, the zoning district alone would not offer any architectural protections for residential structures. In 2015 restrictions on local residential standards were adopted. S.L. 2015-86 became effective law in North Carolina on June 19, 2015 and prohibits the regulation of "building design elements". This prohibition covers exterior building color, type or style of

exterior cladding material, style or materials of roofs or porches, exterior nonstructural architectural ornamentation, location of architectural styling of windows and doors, including garage doors, location of rooms, and interior layout of rooms. These limits have been codified as NCGS 160D-702(b). While it requires more research, the only way to provide some level of architectural protection in this Historic Character Area may be to establish an overlay district, with architectural considerations that would compliment the character of Historic Cottage Row.

As previously stated, this is the first of three meetings where staff will be discussing the Historic Character Area with the Planning Board. At this time, staff envisions this first meeting being an open dialogue with the Planning Board, with the intent of providing more detailed options at the Planning Board's second meeting (December 13th) based upon feedback received.

Included for your review is the adopted moratorium (Ord No. 22-10-020), relevant excerpts from the Comprehensive Land Use Plan, a map of the current zoning designations and existing land uses, Dare County tax card for commercial structures within the area subject to the moratorium to include finished area of structures, and excerpts of the UDO relating to the intent of various zoning districts.

Staff will be available at the Planning Board's November 15th meeting for further discussion.

(DRAFT)

AN ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE OF THE TOWN OF NAGS HEAD, NORTH CAROLINA AND ADDING LANGUAGE TO CREATE A NEW ZONING DISTRICT, C-5, HISTORIC CHARACTER COMMERCIAL.

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; and

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 Unified Development Ordinance 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, on October 19, 2022, the Nags Head Board of Commissioners adopted a moratorium on non-residential development in the area from Danube Street north to Hollowell Avenue, between NC 12 and US Highway 158. Town Ordinance 22-10-020 states that the Planning Board will need three meetings to request adequate research, conduct analyses, complete community engagement activities, and recommend appropriate alternatives. Any recommended ordinances or zoning map amendments will be forwarded to the Board of Commissioners for scheduling a public hearing at their February 1, 2023, regular meeting.

WHEREAS, the 2017 Comprehensive Land Use Plan provides the following policies and actions which should guide the Town’s zoning and development actions:

LU-4d – Identify existing cohesive residential areas that are currently zoned commercial and consider rezoning to residential to preserve their integrity and limit future land use compatibility issues.

LU-4e – Develop regulations that prevent incompatible commercial development adjacent to areas with historical designations or significance.

LU-9b – Evaluate all current commercial zoning districts, based on this plan and the future land use map, to determine if they are functioning as envisioned and make necessary modifications. This should include the review of the existing C-2 district and determine if the C-1 or C-4 districts would be better suited than the current C-2 zoning along NC12, between the highways, and along US 158 (excluding major shopping center developments).

LU10a – Evaluate land uses specified in each zoning district and further clarify which uses are appropriate based on the intent of each district, their overall compatibility with current land uses, and desired future development patterns.

WHEREAS, consistent with Section 3.5.4 of the UDO (and subparts to that section) the Board finds that the proposed text amendment advances the public health, safety, or welfare; will help preserve the residential and historic character of areas of Town where commercial and non-residential uses or increases in or expansions of such uses are not compatible or desirable; is reasonable and in the public interest; and is consistent with the Town of Nags Head Comprehensive Land Use Plan.

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 6.2, Zoning Districts Established**, be amended as follows:

6.2.2. Zoning Districts Established.

In order to implement the purpose and intent of this UDO and the Comprehensive Plan, the following districts are established.

TABLE 6-1: ZONING DISTRICTS ESTABLISHED	
District Name	Abbreviation
Residential Districts:	
Low Density Residential	R-1
Medium Density Residential	R-2
High Density Residential	R-3
Commercial Districts:	
Neighborhood Commercial	C-1
General Commercial	C-2
Commercial Services	C-3
Arts and Culture	C-4
<u>Historic Character Commercial</u>	<u>C-5</u>
Commercial Residential	CR
Special Districts:	
Special Planned Development	SPD-20
Special Environmental	SED-80
Special Planned Development - Community	SPD-C
Ocean and Sound Waters	O&S

PART II. That **Section 6.2.4, Commercial Districts**, be amended as follows:

6.2.4. Commercial Districts.

The Commercial district designation is established to accommodate commercial development located primarily along the two major roadway corridors, US Highway 158 (US 158) and NC Highway 12 (NC 12). Neighborhood Commercial (C-1) is the least intense commercial designation that focuses on less intensive uses that serve the needs of the immediate residential neighborhoods. General Commercial (C-2) allows the broadest range of uses of all the commercial designations and provides both local and regional services. Commercial Services (C-3) is the most intense commercial district allowing warehouse, production, utility and light industrial uses. The C-3 district is the only district that does not adjoin a major roadway corridor. The Arts and Culture (C-4) is established as a neighborhood commercial district with the purpose of encouraging art, galleries, and cultural activities. The Historic Character Commercial (C-5) is established to accommodate neighborhood scale commercial and residential development patterns that are compatible with and protect the surrounding residential areas including Historic Cottage Row. The Commercial Residential (CR) is established to accommodate oceanfront development and associated commercial uses.

Section 6.2.4.6, C-5 Historic Character Commercial District. The C-5 Historic Character Commercial district is intended to accommodate small, neighborhood scale, pedestrian oriented commercial and residential development patterns with single family dwellings and neighborhood serving businesses, consistent with the size and scale of cottages within Historic Cottage Row. Commercial development must be designed in use, scale, character, and intensity to be compatible with and protect the surrounding residential area, including Historic Cottage Row, natural resources and scenic viewsheds. The district shall encourage development of unique, locally owned businesses designed to be reflective of the community's heritage and lifestyle both in scale and massing as well as site layout. Appropriate uses for this area include single-family dwellings (5,000 sq. ft. or less), office, retail, take-out, walk-up and sit-down restaurants, gallery and museums, cottage courts and churches.

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

Section 6.6 Table of Uses and Activities.

Table Key:

P = Permitted Use

R = Supplemental Regulations

S = Special Use

Blank = Not allowed in that district

	Use Category/Class	Use Type	Residential Districts			Commercial Districts					C-5	Special Districts				Overlay Districts			Supplemental Regulations
			R-1	R-2	R-3	CR	C-1*	C-2	C-3	C-4		SPD-20	SED-80	SPD-C*	O&S	CO	HO	SRO	
1	Residential	Cluster Housing		PR															Section 7.1
1	Residential	Cottage Court				SR	SR				SR								Section 7.2
1	Residential	Dwelling, Accessory																	Section 7.3
1	Residential	Dwelling, Large Residential	PR	PR	PR	PR					PR	PR	PR		PR			PR	Section 7.4
1	Residential	Dwelling, Multi-Family						SR											Section 7.5
1	Residential	Dwelling, Single-Family (detached)	P	P	P	P	P	P		P	P	P		P				P	
1	Residential	Dwelling, Two-Family		P	P	P	P	P		P	P								
1	Residential	Granny Pods/Temporary Health Care Structures	PR	PR	PR	PR	PR	PR		PR	PR	PR							Section 7.6
1	Residential	Home Occupation - Class 1	PR	PR	PR	PR	PR	PR		PR	PR								Section 7.7
1	Residential	Home Occupation - Class 2	SR	SR	SR		SR	SR				SR							Section 7.7
1	Residential	Home Occupation - Class 3				SR	SR	SR		SR									Section 7.7
1	Residential	Manufactured Home (as Single-Family Dwelling)							P										
1	Residential>>	Short-term rental	P	P	P	P	P	P		P	P	P	P	P	PR	P	P		

	Use Category/Class	Use Type	Residential Districts			Commercial Districts					Special Districts				Overlay Districts			Supplemental Regulations	
			R-1	R-2	R-3	CR	C-1*	C-2	C-3	C-4	C-5	SPD-20	SED-80	SPD-C*	O&S	CO	HO		SRO
1	Residential	Townhouse							SR				SR						Section 7.5
1.1	Residential - Group	Adult Care Home (over six residents)		P	P														
1.1	Residential - Group	Bed and Breakfast				S	S	S		S									
1.1	Residential - Group	Boarding Houses	SR	SR	SR	SR	SR	SR			SR								Section 7.8
1.1	Residential - Group	Child Care Facility, Family Child Care Home			PR														Section 7.9
1.1	Residential - Group	Dormitory						SR					SR						Section 7.10
1.1	Residential - Group	Family Care Homes/Halfway Homes	PR	PR	PR	PR	PR	PR		PR	PR	PR							Section 7.11
1.1	Residential - Group	Family Foster Home	P	P	P	P	P	P		P	P	P							
1.1	Residential - Group	Hotel				SR	SR	SR											Section 7.12
1.1	Residential - Group	Multi-Unit Assisted Housing with Services		P	P														
2	Retail	Art Gallery				P	P	P		P	S								
2	Retail	Art Gallery - Owner Occupied				P	P	P		P	S								
2	Retail	Artisan's Workshop (3,000 sq. ft. or less)				PR	PR	PR		PR	SR								Section 7.13
2	Retail	Artisan's Workshop (exceeding 3,000 square feet)				SR	SR	SR		SR									Section 7.13
2	Retail	Auction House						PR											Section 7.14
2	Retail	Beach Recreation Equipment Rentals/Sales				P	P	P		P									
2	Retail	Bicycle Shop (repair, retail, rental)					P	P		P									
2	Retail	Convenience Store					P	P											
2	Retail	Firearms Sales and Service						P											

	Use Category/Class	Use Type	Residential Districts			Commercial Districts						Special Districts				Overlay Districts			Supplemental Regulations
			R-1	R-2	R-3	CR	C-1*	C-2	C-3	C-4	C-5	SPD-20	SED-80	SPD-C*	O&S	CO	HO	SRO	
2	Retail	Food/Grocery Store				P	P	P			S								
2	Retail	Furniture Store						P											
2	Retail	General Retail, including clothing, gifts, candy, toys, shoes, jewelry, notions, beach equipment, bakery, antiques, hobby goods, magazines/comics, crafts, dry goods, gifts, musical instruments, bookstores, sporting goods (and the incidental manufacturing, repair, or service of goods on the premises)				P	P	P		P	S								
2	Retail	Greenhouse/Plant Nursery					P	P	P										
2	Retail	Hardware Store					P	P											
2	Retail	Pet Shop/Dog Grooming					PR	PR		PR								Section 7.15	
2	Retail	Pharmacy					P	P											
2	Retail	Production/Repair/Sales Eyeglasses, Hearing Aids, Prosthetics					P	P	P										
3	Service	Automobile Repair						SR										Section 7.16	
3	Service	Bail Bonds						P											
3	Service	Banking Institution					P	P											
3	Service	Broadcasting Studios						P											
3	Service	Car Washes (Automated and Self-Service)						CS										Section 7.18	
3	Service	Carpet Sales and Installation							P										
3	Service	Child Care Facility, Child Care Center					SR	SR										Section 7.9	
3	Service	Dry Cleaners and Laundromats (Pickup only)					P	P											
3	Service	Fire Safety Equipment Sales and Service							P										

	Use Category/Class	Use Type	Residential Districts			Commercial Districts						Special Districts				Overlay Districts			Supplemental Regulations
			R-1	R-2	R-3	CR	C-1*	C-2	C-3	C-4	C-5	SPD-20	SED-80	SPD-C*	O&S	CO	HO	SRO	
3	Service	Food Bank						SR											Section 7.19
3	Service	Fueling Station						SR											Section 7.20
3	Service	Funeral Home						P											
3	Service	Group Fitness-Aerobics/Dance/Karate/Yoga					P	P	P	P									
3	Service	Hair Salon					P	P		P									
3	Service	Indoor Fitness/Gymnasium					P	P	P	P									
3	Service	Indoor Public Assembly Facility				S	P	P		P									
3	Service	Locksmiths						P	P										
3	Service	Massage and Bodywork Therapy					PR	PR		PR						PR			Section 7.21
3	Service	Metaphysical Wellness Services						SR											Section 7.22
3	Service	Parking Lots					P	P											
3	Service	Real Estate Rental Management Facility							P										
3	Service	Security System Sales/Service							P										
3	Service	Sexually Oriented Business							SR										Section 7.23
3	Service	Shoe Repair					P	P		P									
3	Service	Spa					P	P		P									
3	Service	Tailor					P	P		P									
3	Service	Tattoo/Body Piercing							S										
3	Service	Taxi/Limousine Service						S											
3	Service	Telecommunications Sales and Service						P	P										
	Service	Tutoring Facility/Learning Center						P											
3	Service	Veterinary Clinic with Animal Boarding						SR											Section 7.24.1
3	Service	Veterinary Clinic with no Animal Boarding					PR	PR		PR									Section 7.24.2

	Use Category/Class	Use Type	Residential Districts			Commercial Districts					Special Districts				Overlay Districts			Supplemental Regulations	
			R-1	R-2	R-3	CR	C-1*	C-2	C-3	C-4	C-5	SPD-20	SED-80	SPD-C*	O&S	CO	HO		SRO
3	Service	Wallpaper Sales and Installation							P										
3	Service	Water Well Drillers Office, Storage, Sales and Install							P										
4	Food Service	Coffee Shop/Juice Bar						PR		PR									Section 7.25
4	Food Service	Food Truck					PR	PR	PR			SR							Section 7.26
4	Food Service	Ice Cream Shop					P	P	P			P	S						
4	Food Service	Microbreweries						SR	SR										Section 7.27
4	Food Service	Restaurant - Drive In						SR	SR										Section 7.28
4	Food Service	Restaurant - Drive Through							SR										Section 7.29
4	Food Service	Restaurant - Neighborhood					PR	PR	PR			PR	SR						Section 7.30
4	Food Service	Restaurant - Sit Down					PR	PR	PR			PR	SR						Section 7.31
4	Food Service	Restaurant - Take Out					P	P	P			P	SR						
5	Office	Building Contractor's Office							P	P									
5	Office	Office w/Outdoor Storage of Materials/Equip./Vehicles								P									
5	Office	Professional Office, including General Business, Financial, Real Estate Sales, Insurance, Attorney, Accountant, Mortgage						P	P			P	SR						
5	Office	Trade Association Office								P									
6	Commercial Mixed Uses	Commercial with Accessory Residential						PR	PR			PR	SR						Section 7.32, 7.33
6	Commercial Mixed Uses	Group Development						S	S										Section 7.32
6	Commercial Mixed Uses	Mixed Use Development						SR	SR			SR							Section 7.32, 7.34

	Use Category/Class	Use Type	Residential Districts			Commercial Districts					C-5	Special Districts				Overlay Districts			Supplemental Regulations
			R-1	R-2	R-3	CR	C-1*	C-2	C-3	C-4		SPD-20	SED-80	SPD-C*	O&S	CO	HO	SRO	
6	Commercial Mixed Uses	Multiple Principal Uses				SR	SR	SR	SR										Section 7.32, 7.35
6	Commercial Mixed Uses	Shopping Center						SR											Section 7.32
7	Institutional	Adult Day Service Center						SR											Section 7.36
7	Institutional	Cemetery			SR								SR						Section 7.37
7	Institutional	Colleges, Universities, Community Colleges						S											
7	Institutional	Education and Research Facilities					S	S	S										
7	Institutional	School						SR											Section 7.38
7	Institutional	Municipally Operated Farmer's Market						P											
7	Institutional	Fire Station		SR															Section 7.39.1
7	Institutional	Government Administrative Office			P														
7	Institutional	Libraries					S	S											
7	Institutional	Museum					P	P		P	S	P							
7	Institutional	Nonprofit/Community Outreach Center					P	P											
7	Institutional	Nonprofit/Community Outreach Center w/Outdoor Aquatic Fitness Facility		SR				PR					SR						Section 7.40
7	Institutional	Nursing Home/Medical Offices											SR						Section 7.41
7	Institutional	Police Shooting Range											PR						Section 7.42
7	Institutional	Post Office						P											
7	Institutional	Private Club (Non-Profit)	PR	PR	PR														Section 7.43
7	Institutional	Private Clubhouse for 501(c)8 Fraternal Beneficiary Societies as defined by IRS						PR											
7	Institutional	Public Utility Facility	SR	SR	SR	SR	SR	SR	SR		SR	SR							Section 7.44

	Use Category/Class	Use Type	Residential Districts			Commercial Districts					Special Districts				Overlay Districts			Supplemental Regulations	
			R-1	R-2	R-3	CR	C-1*	C-2	C-3	C-4	C-5	SPD-20	SED-80	SPD-C*	O&S	CO	HO		SRO
7	Institutional	Public Works Facility							SR										Section 7.39.2
7	Institutional	Religious Complex		SR	SR		SR	SR	PR		SR	SR							Section 7.45
7	Institutional	Religious Complex w/Accessory School/Daycare		SR	SR			SR	PS		SR	SR							Section 7.45
7	Institutional	Well Fields, Public Water Supply											SR						Section 7.46
7	Institutional	Wastewater Treatment Plants (accessory to pier)						SR											Section 7.47
8	Medical	Alcohol & Drug Outpatient Treatment						P											
8	Medical	Dialysis Center						P											
8	Medical	Medical Office					P	P		P	S								Section 7.41
9	Recreation	Bowling Alley						S											
9	Recreation	Community Garden	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR							Section 7.48
9	Recreation	Environmental Awareness Area											SR	SR					Section 7.49
9	Recreation	Fishing Pier		SR		SR		SR								SR			Section 7.50
9	Recreation	Indoor Entertainment					PR	PR											Section 7.51
9	Recreation	Nonprofit Private Outdoor Recreation										P							
9	Recreation	Private Beach Access Facilities				SR													Section 7.52
9	Recreation	Public Beach/Sound Access/Bathhouse	P	P	P	P	P	P					S						
9	Recreation	Private Pier/Docks (Principal Use)	PR	PR											PR				Section 7.53
9	Recreation	Private Park/Playgrounds, Accessory to a Residential Subdivision or a Multi-Family Development	PR	PR	PR	PR						PR							Section 7.54
9	Recreation	Municipal Park		SR				PR					SR						Section 7.55

	Use Category/Class	Use Type	Residential Districts			Commercial Districts						Special Districts				Overlay Districts			Supplemental Regulations
			R-1	R-2	R-3	CR	C-1*	C-2	C-3	C-4	C-5	SPD-20	SED-80	SPD-C*	O&S	CO	HO	SRO	
9	Recreation	Skate Park Facility																	Section 7.56
9	Recreation	Theater						SR											
9.1	Recreation-Land Dependent	Aerial Adventure Park														SR			Section 7.57
9.1	Recreation—Land Dependent	Designated Public Events Site														SR			Section 7.58
9.1	Recreation—Land Dependent	Go Kart Track														SR			Section 7.59
9.1	Recreation—Land Dependent	Grass Surface Putting Course														SR			Section 7.60
9.1	Recreation—Land Dependent	Mini-Golf														S			
9.1	Recreation—Land Dependent	Outdoor Amusement Rides/Games														SR			Section 7.61
9.1	Recreation—Land Dependent	Outdoor Sport Climbing Wall														SR			Section 7.62
9.2	Recreation—Water Dependent	Parasail Rental													C	C			
9.2	Recreation—Water Dependent	Tour Boat, (49 Passengers or Less)													C	C			
9.2	Recreation—Water Dependent	Watercraft Rental, Non-Powered													SR	SR			Section 7.63
9.2	Recreation—Water Dependent	Watercraft Rental, Powered													SR	SR			Section 7.63
9.2	Recreation—Water Dependent	Watercraft, Personal (Jet-Ski)													SR	SR			
10	Telecommunications	Communication Towers, Major			SR				SR										Section 7.64
10	Telecommunications	Concealed Building mounted Antenna, Installed Flush with Roofline				PR		PR											Section 7.65
10	Telecommunications	Concealed Building mounted Antenna, Not Installed Flush with Roofline						S											
10	Telecommunications	Small Wireless Facilities	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR						Section 7.66

	Use Category/Class	Use Type	Residential Districts			Commercial Districts						Special Districts				Overlay Districts			Supplemental Regulations
			R-1	R-2	R-3	CR	C-1*	C-2	C-3	C-4	C-5	SPD-20	SED-80	SPD-C*	O&S	CO	HO	SRO	
10	Telecommunications	Telephone Switching Stations and Electric Substations							SR										Section 7.67
11	Warehouse/Light Industrial	Asphalt/Concrete Processing							SR										Section 7.68
11	Warehouse/Light Industrial	Assembly or Packaging of Articles							S										
11	Warehouse/Light Industrial	Beverage Manufacturing, Bottling and Processing							S										
11	Warehouse/Light Industrial	Brick and Masonry Facilities							S										
11	Warehouse/Light Industrial	Canvas, Fabric and Upholstery Fabrication							P										
11	Warehouse/Light Industrial	Commercial Crop Production, Indoor						P	P	P	P								
11	Warehouse/Light Industrial	Electrical Equipment Assembly							S										
11	Warehouse/Light Industrial	Fine Craft and Folk Art Production						P	P	P	P								
11	Warehouse/Light Industrial	Indoor Training Facility for Dog Agility							P										
11	Warehouse/Light Industrial	Junk Yards, Scrap Yards and Salvage Facilities							SR										Section 7.69
11	Warehouse/Light Industrial	Mini Storage (Self-Storage) Complex							SR										Section 7.70
11	Warehouse/Light Industrial	Open Space Infrastructure							P										
11	Warehouse/Light Industrial	Outdoor Storage in Crates, Trailers, etc.							P										
11	Warehouse/Light Industrial	Outdoor Storage of Construction Equip./Materials							S										
11	Warehouse/Light Industrial	Outdoor Storage of Vehicles, Equip. and Other Goods							P										
11	Warehouse/Light Industrial	Screen Printing Facility							SR										Section 7.71

	Use Category/Class	Use Type	Residential Districts			Commercial Districts					Special Districts				Overlay Districts			Supplemental Regulations	
			R-1	R-2	R-3	CR	C-1*	C-2	C-3	C-4	C-5	SPD-20	SED-80	SPD-C*	O&S	CO	HO		SRO
11	Warehouse/Light Industrial	Stone Cutting, Shaping and Finishing Facilities							P										
11	Warehouse/Light Industrial	Trade Centers								SR									Section 7.72
11	Warehouse/Light Industrial	Warehousing & Storage Facilities							S										
12	Accessory Uses	Bulkhead/Estuarine Bulkhead	P	P	P	P	P	P	P	P		P	P		P	P		P	
12	Accessory Uses	Customary Accessory Church Facilities		S	S			S	P		S	S							
12	Accessory Uses	Docking Facility, Accessory to Restaurant						P							P				Section 7.73
12	Accessory Uses	Electric Vehicle Charging Station	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR					Section 7.17
12	Accessory Uses	Electric Vehicle Battery Exchange Station						PR											Section 7.16
12	Accessory Uses	Garage	P	P	P	P	P	P	P	P		P	P			P		P	
12	Accessory Uses	Greenhouses	P	P	P	P	P	P	P	P		P							
12	Accessory Uses	Heliport, Accessory to Hospital and Medical Offices											SR						Section 7.74
12	Accessory Uses	On-site Rental of Beach Chairs & Umbrellas					PR	PR											Section 7.75
12	Accessory Uses	Outdoor Stands - Accessory to Shopping Centers and Group Developments					PR	PR											Section 7.76
12	Accessory Uses	Portable Storage Units/Temporary Construction Trailers	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR						Section 7.77
12	Accessory Uses	Shed	P	P	P	P	P	P	P	P	P	P	P					P	
12	Accessory Uses	Solar Energy Facility, Accessory	P	P	P	P	P	P	P	P	P	P	P					P	
12	Accessory Uses	Swimming Pool	P	P	P	P	P	P		P	P	P	P					P	
12	Accessory Uses	Walls and Fences	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR			PR		PR	Section 7.78
12	Accessory Uses	Wind Energy Facility, Rooftop	PR	PR	PR	PR		PR			PR	PR	PR		PR			PR	Section 7.79.1

	Use Category/Class	Use Type	Residential Districts			Commercial Districts					Special Districts				Overlay Districts			Supplemental	
			R-1	R-2	R-3	CR	C-1*	C-2	C-3	C-4	C-5	SPD-20	SED-80	SPD-C*	O&S	CO	HO	SRO	Regulations
12	Accessory Uses	Wind Energy Facility, Small	P	P	P	P		P				P	P				SR	P	
12	Accessory Uses	Wind Energy Facility, Vertical Axis	PR	PR	PR	PR						PR	PR					PR	Section 7.79.2
		NOTES: * Refer to Article 9, Section 9.36 Table of Uses and Activities for the SPD-C District.																	

PART IV. That **Section 8.2, Development Standards – Primary Zoning Districts**, be amended as follows:

Section 8.2 Development Standards - Primary Zoning Districts.

8.2.1. Dimensional Requirements.

District	Minimum Lot Area ¹	Minimum Lot Width	Minimum Front Yard Depth	Minimum Side Yard Depth	Minimum Rear Yard Depth	Maximum Building Height ²	Lot Coverage ³
R-1 Low-Density Residential Single-Family Large Residential ⁴	20,000 sq. ft.	75 feet	30 feet	12 feet	20% of lot depth, not to exceed 30 feet ⁵	35 feet, 42 feet if utilizing 8/12 roof pitch	30% plus 300 sq. ft. or 33%, whichever is greater
R-2 Medium-Density Residential Single-Family Two-Family Large Residential ⁴ Lots using individual well/septic tanks	20,000 sq. ft. 30,000 sq. ft. 20,000 sq. ft. per dwelling unit	70 feet	30 feet	10 feet	20% of lot depth, not to exceed 30 feet ⁵	35 feet, 42 feet if utilizing 8/12 roof pitch	30% plus 300 sq. ft. or 33%, whichever is greater
R-3 High-Density Residential Single-Family Two-Family Large Residential ⁴ Lots using individual well/septic tanks	15,000 sq. ft. 22,500 sq. ft. 20,000 sq. ft. per dwelling unit	60 feet	30 feet	8 feet	20% of lot depth, not to exceed 30 feet	35 feet, 42 feet if utilizing 8/12 roof pitch	30% plus 300 sq. ft. or 33%, whichever is greater
CR Commercial Residential¹⁰ Commercial ⁶ Single-Family Two-Family Large Residential ⁴ Lots using individual well/septic tanks	15,000 sq. ft. 15,000 sq. ft. 22,500 sq. ft. 20,000 sq. ft. per dwelling unit	50 feet	See footnote 6 30 feet 30 feet	8 feet	25 feet 20% of lot depth, not to exceed 30 feet ⁸	35 feet, 42 feet if utilizing 8/12 roof pitch	40% 30% plus 300 sq. ft. or 33%, whichever is greater
C-1 Neighborhood Commercial Commercial ⁶ Single-Family Two-Family Large Residential ⁴ Lots using individual well/septic tanks	15,000 sq. ft. 15,000 sq. ft. 22,500 sq. ft. 20,000 sq. ft.	50 feet	See footnote 6 30 feet 30 feet	15 feet ⁷	25 feet 20% of lot depth, not to exceed 30 ft.	35 feet, 42 feet if utilizing 8/12 roof pitch	55% 30% plus 300 sq. ft. or 33%, whichever is greater

District	Minimum Lot Area ¹	Minimum Lot Width	Minimum Front Yard Depth	Minimum Side Yard Depth	Minimum Rear Yard Depth	Maximum Building Height ²	Lot Coverage ³
	per dwelling unit						
C-2 General Commercial Commercial ⁶ Single-Family Two-Family Large Residential ⁴ Lots using individual wells/septic tanks	15,000 sq. ft. 15,000 sq. ft. 22,500 sq. ft. 20,000 sq. ft. per dwelling unit		See footnote 6 30 feet 30 feet	15 feet ⁷ 8 feet 8 feet	25 feet 20% of lot depth, not to exceed 30 ft.	35 feet, 42 feet if utilizing 8/12 roof pitch	55% 30% plus 300 sq. ft. or 33%, whichever is greater
C-3 Commercial Services⁸	25,000 sq. ft.	100 feet	30 feet	20 feet	25 feet	35 feet, 42 feet if utilizing 8/12 roof pitch	⁹
C-4 Arts and Culture Commercial ⁶ Single-Family Two-Family Large Residential ⁴ Lots using individual well/septic tanks	15,000 sq. ft. 15,000 sq. ft. 15,000 sq. ft. 22,500 sq. ft. 20,000 sq. ft.	60 feet	See footnote 6	10 feet	20% of lot depth, not to exceed 30 ft.	35 feet, 42 feet if utilizing 8/12 roof pitch	40% 30% plus 300 sq. ft. or 33%, whichever is greater
<u>C-5 Historic Character Commercial</u> <u>Commercial⁶</u> <u>Single-Family</u> <u>Two-Family</u> <u>Large Residential⁴</u> <u>Lots using individual well/septic tanks</u>	<u>15,000 sq. ft.</u> <u>15,000 sq. ft.</u> <u>22,500 sq. ft.</u> <u>20,000 sq. ft. per dwelling unit</u>	<u>50 feet</u>	<u>See footnote 6</u> <u>30 feet</u> <u>30 feet</u>	<u>15 feet⁷</u> <u>8 feet</u> <u>8 feet</u>	<u>25 feet</u> <u>20% of lot depth, not to exceed 30 ft.</u>	<u>35 feet, 42 feet if utilizing 8/12 roof pitch</u>	<u>55%</u> <u>30% plus 300 sq. ft. or 33% whichever is greater</u>

Footnotes:

¹ Minimum Lot Area - for nonconforming lots, refer to Section 5.2, Nonconforming Lots of Record which establishes regulations under which a structure can be built on a legally nonconforming lot that does not meet the current minimum lot area or width requirements.

² Maximum Building Height - refer also to subsection 8.6.4 Building Height.

³ Lot Coverage - refer also to subsection 8.6.6 Lot Coverage.

⁴ Large Residential Dwelling - refer to Section 7.4 for dimensional requirements.

⁵ Minimum Rear Yard Depth - for oceanfront properties, refer to subsection 8.6.3.3 Oceanfront Property.

⁶ Commercial - refer to Article 10, Part VI, Commercial Design Standards to determine front yard setback and building size.

⁷ Minimum Side Yard Depth - the total combined side yard shall be a minimum of 15 feet. In no instance shall either side yard be less than five feet.

⁸ C-3 Commercial Services District - refer also to Section 8.3 Special Development Standards - Primary Zoning Districts.

⁹ Lot Coverage, C-3 District - refer to subsection 8.6.6.4 Special Requirements for the C-3 District.

¹⁰ Building Size Limitation in CR- refer to Section 11.44.3 Coastal High Hazard Areas (Zones VE) and Properties East of NC 12 and SR 1243.

PART V. That **Section 8.3, Special Development Standards – Primary Zoning Districts**, be amended as follows:

8.3.2. C-5, Historic Character Commercial District.

8.3.2.1. Where the requirements listed below conflict with other requirements of the Unified Development Ordinance, this Section shall supersede.

8.3.2.1.1. Commercial structures on lots fronting NC 12 shall not exceed 3,500 square feet of habitable building area.

8.3.2.1.2. Commercial structures on lots fronting US Highway 158 shall not exceed 10,000 square feet of habitable building area.

8.3.2.1.3. Commercial structures developed on lots having frontage on both NC 12 and US Highway 158 shall not exceed 3,500 square feet of habitable building area, however, if the entirety of the structure is located 75 feet or greater from the NC 12 right-of-way, the structure size may be increased up to 10,000 square feet of habitable building area.

8.3.2.2. In addition to achieving compliance with the commercial design standards of Article 10, Part VI of the Unified Development Ordinance, the Board of Commissioners must also make a finding that the proposed building design reflects the heritage of “Old Nags Head” and does not diminish the unique architectural character of the Nags Head Beach Cottage Row Historic District or the surrounding properties.

8.3.2.3. All new construction, any increases in building area, customer service area, lot coverage, addition of outdoor storage/customer waiting areas, or change of use of any commercial structure within the C-5 District must be approved via the Special Use Permit/Site Plan Review process.

PART VI. That **Section 10.82, Commercial Design Standards, Applicability**, be amended as follows:

These design standards shall apply to all building construction or remodeling projects requiring a special use permit or site plan review according to requirements found in this UDO. These standards shall not apply to the following uses:

- Fishing piers
- Public utility facilities
- Single-family dwellings and Two-family dwellings
- Projects located in the C-3, Commercial Services Zoning District.

Except for the uses listed above, all existing principal structures located in the Commercial Residential (CR) District, Neighborhood Commercial (C-1) District, General Commercial (C-2) District, Arts and Culture (C-4) District, **Historic Character Commercial (C-5)**, and The Village at Nags Head SPD-C Commercial 1, Commercial 2, and Hotel zoning districts which do not meet the requirements

of this section shall be regulated in accordance with [Article 5](#), Nonconformities of this UDO. Where a project subject to site plan or special use review is associated with an existing building, such as an addition or partial remodeling, these design standards shall apply only to the new construction, or the part of the building being remodeled. These standards shall also apply to any accessory building greater than five hundred (500) square feet located on a site with a principal building that is regulated by this section.

PART VI. 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:

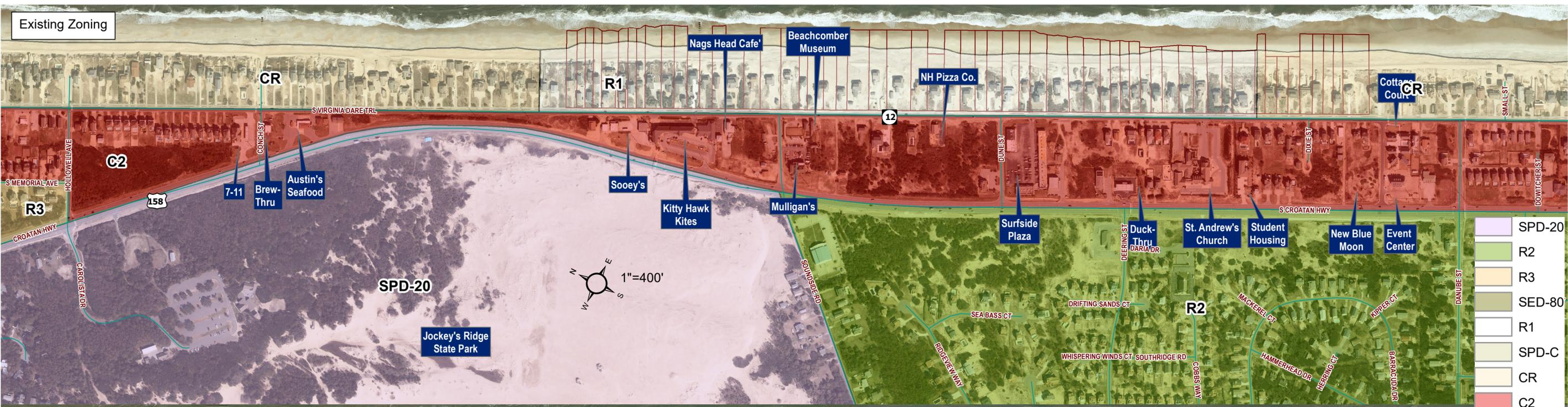
Town Attorney

Date adopted: _____

Motion to adopt by Commissioner _____

Motion seconded by Commissioner _____

Vote: _____ AYES _____ NAYS



ATTACHMENT C

Business	C-1	C-2	Proposed C-5	R-3
7-Eleven Gas Station (Fueling Station/Convenience)	Use: Not permitted. Building Area: Complaint.	Use: Permitted by Special Use Permit. Building Area: Compliant.	Use: Not permitted. Building Area: Compliant, less than 3,500sf.	Use: Not permitted.
Brew Thru (Drive Thru Convenience no longer an allowable use.)	Use: Legally nonconforming.	Use: Legally nonconforming.	Use: Not permitted.	Use: Not permitted.
Tide Chasers Bait & Tackle (General Retail)	Use: Permitted by Right. Building Area: Compliant.	Use: Permitted by Right. Building Area: Compliant.	Use: Permitted by Special Use Permit. Building Area: Compliant, less than 3,500 sf.	Use: Not permitted.
Austins Seafood (Food/Grocery Store)	Use: Permitted by Right. Building Area: Complaint.	Use: Permitted by Right. Building Area: compliant.	Use: Permitted by Special Use Permit. Building Area: Compliant, less than 3,500 sf.	Use: Not permitted.
Station 20/ Lifeguards (Institutional, Government Offices)	Use: Not permitted.	Use: Not permitted.	Use: Not permitted. Building Area: Compliant, less than 3,500 sf.	Use: Not permitted.
Sooeys (Restaurant, Sit Down)	Use: Permitted by Right w/ supplemental regs. Building Area: complaint.	Use: Permitted by Right w/ supplemental regs. Building Area: compliant.	Use: Permitted by Special Use Permit. Building Area: Compliant, less than 3,500 sf.	Use: Not permitted.

ATTACHMENT C

Life is Good (General Retail)	Use: Permitted by right. Building Area: Compliant.	Use: Permitted by Right. Building Area: Compliant.	Use: Permitted by Special Use Permit. Building Area: Compliant, less than 3,500 sf.	Use: Not permitted.
Kitty Hawk Kites @ Jockeys Ridge Crossing (Shopping Center)	Use: Not permitted. Building Area: Not compliant.	Use: Permitted by Special Use Permit. Building Area: Not compliant.	Use: Not permitted. Building Area: Noncompliant, greater than 10,000sf.	Use: Not permitted.
Nags Head Café (Restaurant, Sit Down)	Use: Permitted by Right w/ supplemental regs. Building Area: Compliant	Use: Permitted by right w/ supplemental regs. Building Area: Compliant.	Use: Permitted by Special Use Permit. Building Area: Noncompliant at 4,030 sf (greater than 3,500)	Use: Not permitted.
Mulligans Restaurant (Restaurant, Sit Down)	Use: Permitted by right w/ supplemental regs. Building Area: Compliant.	Use: Permitted by right w/ supplemental regs. Building Area: Compliant	Use: Permitted by Special Use Permit. Building Area: Compliant, less than 10,000 sf, dual frontage and 75' from NC 12.	Use: Not permitted.
Nags Head Pizza (Restaurant, Sit Down)	Use: Permitted by right w/ supplemental regs. Building Area: compliant	Use: Permitted by right w/ supplemental regs. Building Area: compliant	Use: Permitted by Special Use Permit. Building Area: Compliant, less than 3,500 sf.	Use: Not permitted.
Medical Office (Medical Office)	Use: Permitted by Right.	Use: Permitted by Right. Building Area: Compliant	Use: Permitted by Special Use Permit.	Use: Not permitted.

ATTACHMENT C

	Building Area: Compliant		Building Area: Compliant, less than 10,000 sf.	
Surfside Plaza (Shopping Center)	Use: Not permitted. Building Area: Not Compliant.	Use: Permitted by Special Use Permit. Building Area: Not Compliant.	Use: Not permitted. Building Area: Noncompliant at 13,600 sf (greater than 10,000).	Use: Not permitted.
Crazy Good Cabinets (General Retail/Hardware)	Use: Permitted by Right. Building Area: Compliant	Use: Permitted by Right. Building Area: Compliant.	Use: Permitted by Special Use Permit. Building Area: Compliant, less than 10,000sf.	Use: Not permitted.
Old Cancer Center/Vacant (Medical Office)	Use: Permitted by right. Building Area: Compliant.	Use: Permitted by right. Building Area: Compliant.	Use: Permitted by Special Use Permit. Building Area: Compliant, less than 10,000 sf.	Use: Not permitted.
Duck Thru Gas Station (Fueling Station/Convenience)	Use: Not permitted Building Area: Compliant.	Use: Permitted by Special Use Permit Building Area: Compliant.	Use: Not permitted. Building Area: Compliant, less than 10,000 sf.	Use: Not permitted.
St. Andrews Church (Religious Complex)	Use: Permitted by Special Use Permit Building Area: Noncompliant	Use: Permitted by Special Use Permit Building Area: Noncompliant.	Use: Permitted by Special Use Permit. Building Area: Noncompliant, greater than 10,000 sf.	Use: Permitted by Special Use Permit.
Dormitory/Apartments (Dormitory/Multifamily)	Use: Permitted by Special Use Permit (consider removing)	Use: Permitted by Special Use Permit (consider removing)	Use: Not permitted. Building Area: Compliant, less than 10,000 sf.	Use: Not permitted.

ATTACHMENT C

	Building Area: Compliant.	Building Area: Compliant.		
Haven on the Banks Cottage Court (Cottage Court)	Use: Permitted by Special Use Permit Building Area: Compliant.	Use: Permitted by Special Use Permit Building Area: Compliant.	Use: Permitted by Special Use Permit. Building Area: Compliant, individual structures less than 3,500 sf.	Use: Not permitted.
Keepers Galley Event Space (Indoor Public Assembly)	Use: Permitted by right. Building Area: Compliant.	Use: Permitted by right. Building Area: Compliant.	Use: Not permitted. Building Area: Compliant, less than 10,000 sf.	Use: Not permitted.
The Barn at Keepers Galley (Indoor Public Assembly)	Use: Permitted by Right. Building Area is Complaint.	Use: Permitted by Right. Building Area is Compliant.	Use: Not permitted. Building Area: Compliant, less than 10,000 sf.	Use: Not permitted.

PART II - UNIFIED DEVELOPMENT ORDINANCE
Article 5. NONCONFORMITIES

Article 5. NONCONFORMITIES

Section 5.1 Intent.

5.1.1. It is the intent of this UDO to regulate lots, structures, sites and uses of land which were conforming at the time of their creation or construction but no longer adhere to the requirements of this UDO. The Town desires to allow nonconformities to continue until they are removed. Nonconforming uses and nonconforming portions of structures shall not be enlarged, expanded or extended, except as specifically provided for in Section 5.6, Nonconforming Use of a Structure.

5.1.2. Nonconformities are allowed to continue and are encouraged to receive routine maintenance in accordance with the requirements of this UDO as a means of preserving safety, appearance, and sense of community.

5.1.3. However, nothing in this UDO shall be deemed to require a change in the plans, construction or designated use of any structure for which approval has been granted in accordance with Article 4, Development Review Process subject to the time limitations specified in Section 4.15 Time Limitations for Site Plans, Development Permits, & Building Permits.

5.1.4. Except as provided in subsection 5.6.3.2, nothing in this UDO shall prevent the strengthening or restoring to a safe condition of any structure or part thereof declared to be dangerous to life by the Building Inspector charged with protecting the public safety, or upon order of such official when he has determined that there is a clear and immediate danger to the public safety. However, required repairs and maintenance shall be done in conformity with the provisions of this UDO or in conformity with the regulations of the district in which it is located.

5.1.5. Temporary uses or uses modified on a temporary basis subject to a Temporary Use Permit as authorized and limited by Section 4.11.5. shall have no effect on nonconforming status as established by the sections of this Article.

(Ord. No. 20-06-007 , Art. III, Pt. VII, 6-3-2020)

Section 5.2 Nonconforming Lots of Record.

5.2.1. When a nonconforming lot is adjacent to one or more conforming or nonconforming lots under the same ownership as the nonconforming lot, and when any portion of a proposed structure or required use is located on two or more lots, the lots shall be combined into one single lot of record, and a plat combining such lots shall be recorded in the Dare County Register of Deeds prior to the issuance of a building permit. Existing commercial uses and structures may be exempted from this requirement as provided for under subsection 5.2.4.

5.2.2. In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory building may be erected on any single lot which met all legal requirements at the time of its creation and recording in the Dare County Register of Deeds, subject to the following provisions:

5.2.2.1. All dimensional requirements applying to that district, other than lot area and lot width, shall be met.

5.2.2.2. The lot must not be less than 5,000 square feet in area.

5.2.2.3. The lot must abut either an improved public right-of-way as shown on the most recent Powell Bill Map or on a street or access approved by the Board of Commissioners.

5.2.2.4. A current permit for a sewage system shall be issued by the Dare County Health Department or authorization received from the NC Department of Environmental Quality prior to the issuance of a building permit.

5.2.3. In any commercial zoning district, any lot which was legal at the time of its creation and recorded in the Dare County Register of Deeds may accommodate any commercial use permitted within that district, subject to the provisions contained in subsection 5.2.2 of this section.

5.2.4. Existing commercial uses and structures developed on multiple adjoining conforming or nonconforming lots under the same ownership, when developed under a common scheme of development and site plan, shall not be required to recombine parcels into a singular lot and may be used and developed as a single site subject to the following terms and conditions:

5.2.4.1. Applicable front yard, rear yard, side yard and buffering requirements for uses and structures shall not be applied to each individual lot line within the site, but shall be applied in the same manner to the outer boundaries of the identified site. This provision allows for the crossing of uses and structures over existing internal lot lines located within the site.

5.2.4.2. Lot coverage shall be allowed to be calculated for the entire site in the same manner that it is calculated for individual lots. Parking, stormwater management, and all other development regulations applicable to the commercial use and development on individual lots shall be allowed to be applied in the same manner to the site.

5.2.4.3. Multiple structures shall be permitted on a site as provided for in this section.

5.2.4.4. Once a site is developed as a retail shopping center or other unified commercial development requiring shared parking and in use as allowed by this section, all lots within such site must remain in the same ownership and may not be individually sold. Lots within the site may only be individually sold if all use, site, and structural nonconformities which would have otherwise resulted if the lots had not developed as a singular site as allowed by this section are removed. The provisions of this section shall apply to only those lots presently developed with commercial uses and shall not be applicable to undeveloped and unimproved lots.

Section 5.3 Nonconforming Structure with Conforming Use.

A nonconforming structure may be continued, subject to the following provisions:

5.3.1. A nonconforming structure may not be enlarged or altered in a way which increases the degree of nonconformity. Reconstruction and additions occurring within the existing building footprint, excluding enclosed space additions above or below open decks, shall be allowed and shall not constitute an increase in structural nonconformity.

5.3.2. A nonconforming structure occupied by a conforming principal use destroyed or otherwise modified by any means may be repaired, maintained, or replaced with an identical or similar structure regardless of value provided the repair, maintenance or replacement does not create any new structural nonconformities or increase the degree of existing structural nonconformities.

5.3.3. Should such structure be moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations for the district in which it is located after it is moved, except as provided in subsection 5.3.4.

5.3.4. Any nonconforming structure located on a lot adjacent to the Atlantic Ocean or Roanoke Sound may be moved landward on the same lot, provided that such movement does not increase the degree of nonconformity of the structure in any way. However, when dimensional requirements can be met, they shall be met, except as provided for in Article 8, Section 8.6.3.7, Reductions in Yard Setbacks.

Section 5.4 Nonconforming Site and Parking Areas.

Where a nonconforming site exists that was legal at the time of its creation but which would not be permitted by the regulations imposed by this UDO, the nonconforming site may continue, subject to the following provisions:

- 5.4.1.** No structure on a nonconforming site may be enlarged or altered in a way which increases the nonconformity of the site.
- 5.4.2.** No use on a nonconforming site may be expanded, enlarged, or increased in a way which increases the nonconformity of the site.
- 5.4.3.** Any changes to a nonconforming site or parking area must comply with all of the requirements of this UDO.
- 5.4.4.** The change of use of a structure on a nonconforming site from one permitted use to another permitted use shall be allowed, provided that there is no increase in the degree of nonconformity of the site. Where the site is nonconforming due to an insufficient number of parking spaces for the proposed new use, the Board of Commissioners may approve a change of use without requiring additional parking spaces in accordance with the procedures set forth in section 10.15.2.6.

(Ord. No. 20-01-002 , Art. III, Pt. IV, 1-8-2020)

Section 5.5 Nonconforming Use of Land.

Where use of land exists that was legal at the time of its creation but which would not be permitted by regulations imposed by this UDO, and where such use involves no individual structure or combinations of structures with a cumulative assessed tax value not exceeding \$5,000.00, the use may continue, subject to the following provisions:

- 5.5.1.** No such nonconforming use shall be enlarged or altered in a way which increases the degree of nonconformity, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this UDO. An example of an increase in degree of nonconformity would be installing additional rides in an amusement park.
- 5.5.2.** No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this UDO.
- 5.5.3.** If any such nonconforming use of land ceases for any reason for a period of more than 12 consecutive months, any subsequent use of such land shall conform to the regulations specified by this UDO for the district in which such land is located. For the purpose of this article, indicators of the cessation shall include, but not be limited to, no Town water or no electrical service has been legally provided and consumed for the nonconforming use or structure in question for a period of 12 consecutive months.
- 5.5.4.** No structure requiring a building permit shall be erected until the nonconforming use of land is eliminated or converted to a use permitted by the regulations of the district in which such land is located.

Section 5.6 Nonconforming Use of a Structure.

5.6.1. If a use involving individual structures or combinations of structures with a cumulative replacement cost of \$5,000.00 or more exists that was legal at the time of its creation but would not be allowed in the district under the terms of this UDO, the lawful use may continue, subject to the following provisions:

- 5.6.1.1.** No existing structure devoted to a use not permitted by this UDO in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted by the regulations of the district in which it is located.

5.6.1.2. Any nonconforming use may be extended throughout any part of a structure which was manifestly arranged or designed for such use at the time of adoption or amendment of this UDO, but no such use shall be extended to occupy any land outside such building. A conforming structure cannot be expanded to allow expansion of a nonconforming use.

5.6.1.3. Where a nonconforming use is superseded by a permitted use, the nonconforming use may not thereafter be resumed.

5.6.1.4. If the nonconforming use of any structure ceases for any reason for a period of more than 12 consecutive months, any subsequent use of the structure shall conform to the regulations specified by this UDO for the district in which such structure is located. For the purpose of this article, indicators of the cessation shall include, but not be limited to, no Town water or no electrical service has been legally provided and consumed for the nonconforming use or structure in question for a period of 12 consecutive months.

5.6.2. A conforming structure with a nonconforming use may be repaired and maintained, subject to the following provisions:

5.6.2.1. On any structure containing a nonconforming use, work may be done on ordinary repairs, or on repair or replacement of nonloadbearing walls, fixtures, wiring or plumbing, provided that the cubic content or intensity existing when it became nonconforming shall not be increased.

5.6.2.2. If a structure containing a nonconforming use becomes dangerous to life, destroyed or unlawful due to lack of repairs and maintenance, the building inspector shall condemn the structure in accordance with G.S. 160D-1119, and the structure may thereafter be restored, repaired or rebuilt provided that the cubic content or intensity of the existing nonconforming use is not increased, or that the use is changed to a use permitted by the regulations the district in which it is located.

5.6.2.3. Nothing in this chapter shall prevent the strengthening or restoring to a safe condition of any structure or part thereof declared to be dangerous to life by any official charged with protecting the public safety, or upon order of such official when he has determined that there is a clear and immediate danger to the public safety.

5.6.3. A nonconforming structure with a nonconforming use may be repaired and maintained, subject to the following provisions:

5.6.3.1. On any nonconforming structure containing a nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs or on repair or replacement of nonload-bearing walls, fixtures, wiring or plumbing, to an extent not exceeding 50 percent of either the annually adjusted Dare County assessed tax value or independent appraisal value of the nonconforming structure as determined by a North Carolina Licensed Appraiser, provided that the degree of nonconformity existing when it became nonconforming shall not be increased.

5.6.3.2. If a nonconforming structure containing a nonconforming use becomes dangerous to life, destroyed or unlawful due to lack of repairs and maintenance, where such destruction or lack of repairs and maintenance exceeds 50 percent of either the annually adjusted Dare County assessed tax value or independent appraisal value as determined by a North Carolina Licensed Appraiser, the building inspector shall condemn the structure in accordance with G.S. 160D-1119, and the structure shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of the district in which it is located.

(Ord. No. 21-06-012 , Art. III, Pt. VI(Att. F), 6-2-2021)

Section 5.7 Nonconforming Sign and Sign Structure.

If a sign and/or sign structure exists that was legal at the time of its erection that would not be allowed under the terms of this UDO, the sign may continue, subject to the following provisions:

5.7.1. A nonconforming sign shall not be moved or replaced except to bring the sign into conformity with this UDO. No additional signage shall be added to a site which has a nonconforming sign.

5.7.2. If a sign and structure become physically unsafe, damaged, destroyed or unlawful due to storm-related damage or damage incurred at no fault of the owner where such damage exceeds 50 percent of the replacement cost, the sign shall be declared destroyed by the building inspector and shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of this UDO.

5.7.3. If a sign and/or sign structure becomes physically unsafe, damaged, destroyed, or unlawful due to lack of repairs and/or maintenance, where the cost of repair exceeds 25 percent of the replacement cost, the sign shall be declared destroyed by the building inspector and shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of this UDO.

Section 5.8 Vested Right.

Nothing in this Article shall conflict with the provisions in Section 3.6 pertaining to a vested right.

Section 5.9 Historic Structures.

Identified historic structures and/or maids' quarters which were legal at the time of their placement or construction, but which would not be permitted by the regulations imposed by this UDO may continue, subject to the following provisions:

5.9.1. Historic structures or maids' quarters may not be enlarged or altered in a way which increases the degree of nonconformity. An example of the increase in the degree of nonconformity would be to enclose above or below a nonconforming deck whether or not the footprint is increased. Additions above or below nonconforming portions of enclosed floor space shall not constitute an increase in the degree of nonconformity.

5.9.2. For the purpose of this section, historic structures and detached maids' quarters will be considered collectively when determining thresholds for repair, maintenance, and destruction.

5.9.3. Historic structures and maids' quarters listed on the National Register of Historic Places located on lots abutting the Atlantic Ocean or Roanoke Sound may be moved provided that such movement does not increase the degree of nonconformity of these structures in any way. When utilizing this provision, a minimum ten-foot separation shall be maintained between individual structures. All historic structures, when moved, shall adhere to the minimum setback requirements prescribed for single-family dwellings in the applicable zoning district if those setbacks can be met.

5.9.4. If a historic structure or maids' quarters becomes dangerous to life, destroyed, or unlawful due to lack of repairs or maintenance, where such destruction or lack of repairs and maintenance exceed either the annually adjusted Dare County assessed tax value or the independent appraisal value as determined by a North Carolina Licensed Appraiser, the building inspector shall condemn the structure in accordance with G.S. 160D-1119, and the structure shall not thereafter be restored, repaired, rebuilt or replaced, except in conformity with the regulations of this UDO and any other applicable federal or state regulations.

5.9.5. For a historic structure having an attached or detached maids' quarters to make use of these provisions, no repair, alteration, restoration or replacement shall be made to these structures that would jeopardize its listing on the National Register of Historic Places.

5.9.6. Existing maids' quarters may be replaced subject to the other requirements of this UDO provided the following conditions are met:

5.9.6.1. The maids' quarters must be listed on the National Register of Historic Places.

5.9.6.2. The maids' quarters shall be architecturally compatible with the principal dwelling to the maximum extent feasible.

5.9.6.3. Replacement maids' quarters shall be similar in appearance to the maids' quarters which are being replaced.

5.9.6.4. The square footage limitations as defined in Appendix A, Definitions, Dwelling, Large Residential, shall be calculated separately for the maids' quarters and principal building.

5.9.6.5. The number of bedrooms in the maids' quarters cannot exceed the number of documented bedrooms in the original maids' quarters.

5.9.6.6. Total floor area of the maids' quarters shall not exceed 25 percent of the gross floor area of the principal building. Floor area for both the maids' quarters and principal building shall include the floor area of all habitable rooms and garages.

5.9.6.7. Setbacks shall meet the requirements for accessory structures in accordance with subsection 8.6.3.

5.9.6.8. Parking for the maids' quarters and principal building shall be calculated collectively in accordance with Section 10.16, Required Parking by Use.

(Ord. No. 21-06-012 , Art. III, Pt. VI(Att. F), 6-2-2021)

Section 5.10 Application of Commercial Design Standards.

Change of use of any commercial structure or building, in and of itself, shall not require adherence to the provisions of Article 10, Part VI, Commercial Design Standards.

Spot Zoning

David W. Owens

April, 2020

Case summary(ies)

As a general rule, legislative decisions regarding zoning—decisions to adopt, amend, or repeal a zoning ordinance—are presumed to be valid, and the judiciary largely defers to the judgment of local elected officials on such matters.

Summary:

April 2020

Legal Basis for Stricter Scrutiny

As a general rule, legislative decisions regarding zoning—decisions to adopt, amend, or repeal a zoning ordinance—are presumed to be valid, and the judiciary largely defers to the judgment of local elected officials on such matters.^[1]

A key question in land use law is whether this presumption of validity should continue to apply when a rezoning affects only a single parcel or a very small area. Local elected officials and courts around the country have struggled with the question of how the law should treat such small-scale rezonings. While a rezoning is typically characterized as legislative in nature, the practical reality is that when the policy choice is adopted for an individual parcel, the decision often does not have the broad policy implications or public interest and oversight that is more commonly associated with legislative decisions.

As a result, several states have ruled that spot zoning is more appropriately characterized as a quasi-judicial instead of a legislative decision. A larger number of states have considered and rejected this approach, holding even small-scale rezonings are legislative in nature.

The North Carolina courts have refused to characterize small-scale rezonings as quasi-judicial.^[2] However, stricter judicial scrutiny is given to rezonings that affect a small geographic area or a small number of landowners than is given to rezonings implicating broad public-policy issues. Heightened judicial review of spot zoning is founded on state constitutional prohibitions against the granting of exclusive privileges,^[3] the creation of monopolies,^[4] and the violation of due process or equal protection of the law.^[5]

The North Carolina cases speak primarily to substantive due-process concerns with spot zoning.^[6] This is consistent with long-standing doctrine that the police power must be exercised in the interest of the public overall.^[7]

The North Carolina courts have held that spot zoning must not be arbitrary or capricious.^[8] In *Blades v. City of Raleigh*, the court emphasized the need for a reasonable basis to justify spot zoning largely in terms of effects on neighboring properties:

The whole concept of zoning implies a restriction upon the owner's right to use a specific tract for a use profitable to him but detrimental to the value of other properties in the area, thus promoting the most appropriate use of land throughout the municipality, considered as a whole. The police power, upon which zoning ordinances must rest, permits such restriction upon the right of the owner of a specific tract, when the legislative body has reasonable basis to believe that it will promote the general welfare by conserving the values of other properties and encouraging the most appropriate use thereof.^[9]

In its most comprehensive review of spot-zoning limitations, the court in *Chrismon v. Guilford County*^[10] concluded that a clear showing of a reasonable basis must support the validity of spot zoning. This shifts the presumption of validity accorded to legislative zoning decisions when a small-scale rezoning is involved.^[11]

This mandated analysis was incorporated into the zoning statutes in 2005 with the addition of a requirement that a statement analyzing the reasonableness of the proposed rezoning be prepared as part of the consideration of all petitions for a conditional district or any other small-scale rezoning.^[12] With other rezonings, if the reasonableness of the amendment is debatable, it is upheld. With spot-zoning amendments, the local government must affirmatively show the reasonableness of its action.^[13]

In addition to being held to a standard of reasonableness in a due-process context, spot zoning is also restricted by the zoning-enabling statute. G.S. 160D-701 requires that zoning regulations be made in accordance with a comprehensive plan. A rezoning decision on a relatively small parcel that does not consider the effects of the rezoning within the larger community context violates this mandate.^[14]

The language of individual zoning ordinances can impose additional limitations on spot zoning. For example, in the *Blades* case, the Raleigh zoning ordinance required that rezoning decisions be "based on the need to change the zoning map in accordance with the comprehensive plan or to amend the plan for the benefit of the neighborhood or city, because of changed conditions."^[15]

Defining Spot Zoning

Rezonings that undergo more intensive review as spot zoning were simply and concisely defined as zoning "changes limited to small areas" in North Carolina's first case on the subject, *Walker v. Town of Elkin*.^[16]

In *Zopfi v. City of Wilmington*,^[17] a case that upheld the rezoning of a sixty-acre parcel into three zoning districts, the court ruled that illegal spot zoning arose "where a small area, usually a single lot or a few lots, surrounded by other property of similar nature, [was] placed arbitrarily in a different use zone from that to which the surrounding property [was] made subject."^[18] Four years later, in *Blades*, a case that invalidated a five-acre rezoning, spot zoning was more completely defined thus:

A zoning ordinance, or amendment, which singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, so as to impose upon the smaller tract greater restrictions than those imposed upon the larger area, or so as to relieve

the small tract from restrictions to which the rest of the area is subjected, is called “spot zoning.”^[19]

There are several aspects to this definition.

First, spot zoning can be an issue raised in initial zoning as well as in subsequent rezonings.^[20]

Second, no specific minimum or maximum size of an area constitutes spot zoning. The size of the tract must be considered relative to the surrounding area.^[21] A fifty-acre rezoning in a rural setting where that tract and thousands of adjacent acres have previously been zoned the same way may be spot zoning, but a five-acre rezoning in a dense urban setting with numerous zoning districts may not be spot zoning. That said, if the size of the zoning district is sufficiently large, the rezoning is simply not spot zoning. In *Friends of Mt. Vernon Springs, Inc. v. Town of Siler City*, the court held that a 1076-acre tract is not a “relatively small area” and cannot be considered spot zoning.^[22] In the North Carolina cases that have resulted in invalidation of rezonings as illegal spot zoning, the size of tracts involved has ranged from 0.57 to 50 acres.

Third, there is an emphasis on a very limited number of property owners being involved, “usually triggered by efforts to secure special benefits for particular property owners, without regard for the rights of adjacent landowners.”^[23] A large number of affected parties is more likely to bring the rezoning to broader public scrutiny, greater political accountability, and less need for judicial oversight. The definition used in *Blades* in fact speaks to a single owner of the affected property. This “single owner” requirement was applied in *Musi v. Town of Shallotte*,^[24] a rezoning of newly annexed property consisting of fifteen parcels owned by six persons, and in *Good Neighbors of Oregon Hill Protecting Property Rights v. County of Rockingham*,^[25] rezoning a two-acre parcel jointly owned by a father and son. In each case the court found that since the rezoned property was not owned by a single person or entity, it by definition could not be spot zoning.

Fourth, spot zoning can be involved when the proposed new zoning requirements for the small area are either more or less strict than those for the surrounding area. The key element is that the proposed zoning is different from the other zoning, “thus projecting an inharmonious land use pattern.”^[26] It is not spot zoning where the difference in the zoning districts is very modest. For example, in *Childress v. Yadkin County*, the court held that the “restricted residential” and “rural agricultural” (RA) districts at issue were sufficiently similar to avoid a spot-zoning characterization.^[27]

Fifth, there must be a zoning-map amendment to trigger spot-zoning review. A text amendment, even when it is an amendment to the terms of a conditional zoning for a single parcel owned by a single entity, is not spot zoning. For example, in *McDowell v. Randolph County*,^[28] the county approved an amendment to the site plan that allowed relocation of chemical vats in a lumberyard that was in a conditional-zoning district. The site plan was a part of the conditions for the district. The court noted that the amendment did not change the zoning of the parcel, so it by definition could not be considered spot zoning.

In sum, the heightened scrutiny of spot zoning applies when there is the appearance of possible discriminatory treatment (either favorable or negative) for a few, rather than a decision based on the larger public interest.

Factors in Validity

When adopting a “spot” zone, a local government has an affirmative obligation to establish that there is a reasonable public-policy basis for doing so. Thus the public-hearing record and minutes of the board’s deliberations should reflect consideration of legitimate factors for differential zoning treatment of the property involved. Does the property have different physical characteristics that make it especially suitable for the proposed zoning, such as peculiar topography or unique access to roads or utilities? Are there land uses on or in proximity to the site that are different from the uses made of most of the surrounding property? Would the proposed range of newly permissible development be in harmony with the legitimate expectations of the neighbors? Have appropriate safeguards been incorporated to protect the interests of those affected?

In *Chrismon*, the court set out in detail four factors that are considered particularly important by the courts in determining whether there is a reasonable basis for spot zoning:

At the outset, we note that a judicial determination as to the existence or nonexistence of a sufficient reasonable basis in the context of spot zoning is, and must be, the “product of a complex of factors.” The possible “factors” are numerous and flexible, and they exist to provide guidelines for a judicial balancing of interests. Among the factors relevant to this judicial balancing are the size of the tract in question; the compatibility of the disputed zoning action with an existing comprehensive zoning plan; the benefits and detriments resulting from the zoning action for the owner of the newly zoned property, his neighbors, and the surrounding community; and the relationship between the uses envisioned under the new zoning and the uses currently present in adjacent tracts. Once again, the criteria are flexible, and the specific analysis used depends on the facts and circumstances of a particular case.^[29]

The court has subsequently emphasized that a mere cataloging of benefits is inadequate. The “clear showing”^[30] of reasonableness must address the totality of circumstances involved and “must demonstrate that the change was reasonable in light of its effect on all involved.”^[31] Thus the statement of reasonableness approved by the board adopting a spot zoning should specify in some detail the basis for the action taken and the information before the board that supports that conclusion.

In 2019 the gist of the *Chrismon* rule was codified and made applicable to all zoning-map amendments. G.S. 160D-605(b) requires adoption of a statement of reasonableness for all zoning-map amendments. The statute lists the factors that should be considered in this analysis. The factors are suggested and not mandated, as not all factors will be relevant to all rezoning decisions. The factors to be addressed are:

1. the size and physical attributes of the site;
2. the benefits and detriments to the landowner, the neighbors, and the community;
3. how the actual and previously permitted uses of the site relate to newly permitted uses;
4. any changed conditions warranting the amendment; and
5. other factors affecting the public interest.

A review of North Carolina litigation illustrates the application of these factors to spot-zoning challenges of rezonings.

Size of Tract

The first factor to be considered in determining whether spot zoning is reasonable is the size of the tract. The general rule is that the smaller the tract, the more likely the rezoning will be held invalid. However, it is very important to consider the size of the tract in context: a one-acre parcel may be considered large in an urban area developed in the 1920s but very small in the midst of an undeveloped rural area.

The rezoning of an individual lot from a single-family- and multifamily-residential district to a business district was upheld in *Nelson v. City of Burlington*.^[32] In this instance the majority of property directly across the street was already zoned for business use, and the court concluded that, given the prevalence of business zoning in the immediate vicinity of this lot, there was “some plausible basis” for the rezoning.^[33]

However, several cases have held the rezoning of relatively large tracts to be illegal spot zoning. A rezoning of a fifty-acre tract from RA to industrial was invalidated in *Good Neighbors of South Davidson v. Town of Denton*.^[34] The site was a satellite area of the town, located in the midst of a rural and farming area some two miles from the town’s primary corporate limits. A rezoning of a 29.95-acre portion of a 120.3-acre parcel from RA and light industrial to a conditional heavy industrial was invalidated in *McDowell v. Randolph County*,^[35] where the surrounding land, estimated at “thousands of acres,” was uniformly zoned as RA. Similarly, a rezoning of 17.6 acres from RA to industrial was held to be impermissible spot zoning in *Budd v. Davie County*.^[36] The site there was some four to five miles from the nearest industrial zone, with all of the intervening property being in residential districts. A 17.45-acre rezoning was also ruled to be impermissible spot zoning in *Godfrey v. Union County Board of Commissioners*.^[37] This case involved a rural tract that was zoned for single-family-residential use, as was all of the surrounding property, and the rezoning was to an industrial district. The court in *Alderman v. Chatham County*,^[38] which involved the rezoning of a 14.2-acre tract from an RA district to a mobile-home park, when the surrounding 500 acres were residentially zoned, also found that unreasonable spot zoning had occurred. However, at some point the size of the tract is such that it precludes a determination that its size is a factor in determining reasonableness. In *Friends of Mt. Vernon Springs*, the court noted that a rezoning of a 1076-acre tract was not unreasonable and was not spot zoning.^[39]

The fact that other small areas nearby have similar zoning to that proposed in a rezoning will not avoid a spot-zoning label. The tract to be rezoned is considered in relation “to the vast majority of the land immediately around it.”^[40]

Compatibility with Plan

The second factor in a spot-zoning analysis is compatibility with the existing comprehensive zoning plan. This involves an inquiry into whether the rezoning fits into a larger context involving rational planning for the community. Whether set forth in a formal comprehensive land use plan or reflected in an overall zoning scheme, zoning regulations must be based on an analysis of the suitability of the land for development (e.g., topography, soil types, wetland locations, and flood areas), the availability of needed services (e.g., water, sewers, roads, and rail lines), and existing and needed land uses.^[41] To the extent that a small-area rezoning fits into a logical preexisting plan that is clearly based on this type of analysis, it is much more likely to be upheld.

An example of a zoning scheme involving relatively small parcels that was judged acceptable because it fit the context of the land and the surrounding uses is found in *Zoppi*. The court there upheld the rezoning of a roughly sixty-acre triangle, formed by two major highways, into three zoning districts with decreasing density moving away from the point of the highway intersection. A 27.5-acre parcel at the point of the intersection was zoned commercial, the next 12 acres were zoned for multifamily-residential use, and the remainder was zoned for single-family-residential use. Similarly in *Nelson*, the rezoning of a lot from residential use to business use was upheld on the basis that the majority of the property directly across the street was already zoned for business use.

A contrast is provided by situations in which there are no discernible reasons to single out a small tract for differential zoning treatment. This is a common rationale cited by the courts when finding spot zoning to be unreasonable and thus illegal. A number of North Carolina cases illustrate this point.

An early example is *Stutts v. Swaim*. In 1967 the town of Randleman had zoned virtually all of its half-mile extraterritorial-zoning jurisdiction (some 500 acres) for one- and two-family residences. An attempt in 1968 to rezone a four-acre tract to a mobile-home zoning district, when there were no special characteristics present on that site, was ruled invalid spot zoning.^[42] A relatively common spot-zoning controversy arises when a rezoning is proposed to allow intensive industrial-type uses in the midst of largely residential rural areas. In *McDowell v. Randolph County*,^[43] the plaintiff secured the rezoning of nearly thirty acres to allow expansion of milling operations at an existing nonconforming lumberyard and sawmill. The proposed rezoning would have allowed a pallet-making operation, kiln, and industrial-building expansion immediately adjacent to the plaintiff's residence.^[44] The court noted the drastically different statement of purposes for the residential-agricultural and industrial districts in the county's unified development ordinance. The county's growth-management plan expressly provided that industrial development should not be located where it would diminish the desirability of residential uses. The plan identified the site as within the rural growth area, to be composed predominately of agricultural and residential uses. Both the ordinance and the plan called for substantial buffers between industrial and residential uses and the rezoning. The court concluded the rezoning was in direct contravention of these plans and policies. In *Lathan v. Union County Board of Commissioners*,^[45] an 11.4-acre rezoning from residential to light-industrial use was ruled to be invalid spot zoning. A sawmill on the site was being operated as a nonconforming use, and the rezoning was necessary to accommodate the facility's expansion. The site had no access to major highways, rail lines, or public utilities, and the planning director concluded that industrial development would be incompatible with the surrounding residential community. Nevertheless the planning board recommended that the tract be rezoned as requested.^[46] The Union County commissioners agreed with the planning board's recommendation and adopted the rezoning. The adjacent landowner then sued. The court of appeals ruled that no special features on the tract made it any more suitable than the surrounding property for industrial use. The rezoning was ruled invalid spot zoning because there was no clear showing of a reasonable basis for the rezoning. In *Godfrey v. Union County Board of Commissioners*,^[47] the comprehensive plan designated the area rezoned as a low-density residential district, and the nearest industrial uses were approximately a half-mile away. The owner sought rezoning to heavy-industrial use because he wanted to relocate a grain-bin operation to the site. The planning director recommended approval of the rezoning from residential to industrial use based on the site's accessibility to a major highway, a railroad, and public water. The planning board approved the recommendation, and the county commissioners narrowly adopted it. The court invalidated the rezoning, however, finding that the "whole intent and purpose . . . was to accommodate his plans to relocate his grain bins, not to promote the most appropriate use of

the land throughout the community.”^[48] The court acknowledged the availability of some services that would make this tract suitable for industrial development but concluded that the same was true of the surrounding property, and because this tract was “essentially similar,” there was no reasonable basis for zoning it differently.

Three cases illustrate the growing importance of a formal comprehensive plan and the recommendations of the planning board in spot-zoning analysis. In *Mahaffey v. Forsyth County*,^[49] a 0.57-acre tract was rezoned from a residential and highway-business district to a general-business district. The comprehensive plan designated the area as “predominantly rural with some subdivisions adjacent to farms.” The planning staff and the planning board recommended against the rezoning, but the board of commissioners adopted it. In ruling the action to be illegal spot zoning, the court pointedly noted, “[T]he County Planning Board and Planning Board Staff, made up of professionals who are entrusted with the development of and adherence to the comprehensive plan, recommended denial of the petition.”^[50] A similar result was reached in *Covington v. Town of Apex*,^[51] in which the rezoning of a single lot from office and institutional use to conditional use business was held to be impermissible spot zoning. The court concluded that the rezoning contradicted the town’s policies on location of industrial uses, as set forth in the comprehensive plan. The court also found minimal benefit to the public and substantial detriment to neighbors. In *Budd*, the rezoning of a fourteen-acre site along the Yadkin River, as well as a half-mile-long, sixty-foot-wide accessway, from RA to industrial in order to accommodate a sand-mining operation was invalidated in part because it directly contradicted the previously adopted policies for the area. The zoning ordinance’s stated intent for the RA district was to maintain a “rural development pattern” with an aim “clearly to exclude commercial and industrial uses.”^[52] Based on such considerations, the planning board twice recommended denial of the rezoning petition. The court held that the rezoning was in direct contravention of the stated purpose of the comprehensive zoning scheme, and this factored into invalidation of the rezoning.^[53]

Consistency with a comprehensive plan sometimes justifies differential zoning. In *Graham v. City of Raleigh*,^[54] the rezoning of a 30.3-acre tract from a residential to an office district was upheld in part based on the need to bring the property in line with the nodal concept of development promoted in Raleigh’s comprehensive plan.^[55]

Formal amendment of an inconsistent comprehensive plan is not necessarily required to avoid a finding of illegal spot zoning, though a reasonable basis for the deviation must be established.^[56] In *Purser v. Mecklenburg County*,^[57] the court upheld the rezoning of a 14.9-acre tract from residential to conditional use-commercial to allow construction of a neighborhood convenience center. The county’s small-area plan for the site indicated that a nearby but different site was suitable for such a center. However, testimony presented at the public hearing indicated that whereas the suitability of the other site depended on road construction, locating a convenience center on the site in question would be consistent with policies in the county’s general-development plan.

Balancing Benefits and Detriments

The third factor to be considered in spot-zoning analysis is who benefits from the rezoning, who (if anyone) is harmed, and what the relative magnitudes of the benefits and harms are. If the rezoning is granted, will it greatly benefit the owner? Will the owner be seriously harmed if it is denied? After the

same questions are asked of the neighbors and the community at large, the effects on all three must be balanced. In a spot-zoning challenge, the courts, not the governing board alone, review and weigh the balance of benefit and harm created by the rezoning.

The courts may be sympathetic to a rezoning that confers considerable benefit to the owner and only modest harm to others, but even a substantial benefit for the owner will not offset substantial harm to others. This principle is evident in the ruling that invalidated the rezoning challenged in *Blades*. The case involved rezoning a five-acre tract in the midst of a large single-family zoning district to a multifamily district in order to allow for the construction of twenty townhouses. The court found that no reason was offered for treating this property differently and that the character of the existing neighborhood might be greatly harmed as a result.^[58] In *Etheridge v. County of Currituck*,^[59] the court noted that the purported benefits of a proposed recycling center were not supported by any evidence presented at the rezoning hearing, and the benefits offered were “a generalized benefit that has no specific connection to the surrounding rural community,” while the “vast majority” of speakers were in opposition and offered supporting evidence from real-estate professionals and law-enforcement officials.^[60]

Chrismon illustrates the other side of this analysis. The court there noted as follows:

[W]hile spot zoning which creates a great benefit for the owner of the rezoned property with only an accompanying detriment and no accompanying benefit to the community or to the public interest may well be illegal, spot zoning which provides a service needed in the community in addition to benefiting the landowner may be proper.^[61]

In *Chrismon* the rezoning of one 3-acre and one 5-acre tract from an agricultural district to a conditional use–industrial district in order to allow for an agricultural chemical use was upheld. The court weighed the benefit to the owner, the harm to the immediately adjacent neighbor, the broad community support for the rezoning, and the need for these services in the surrounding agricultural community; it concluded that there were “quite substantial benefits created for the surrounding community by the rezoning.”^[62]

The benefits to the community must be real and substantial, not merely convenient. For example, in *Mahaffey*, it was argued that rezoning a 0.57-acre tract to allow for the establishment of an auto-parts store would be beneficial to a rural community in which virtually everyone depended on automobiles. The court rejected this argument, noting, “[A]uto parts are a common and easily obtainable product and, if such a retail establishment were said to be ‘beneficial to a rural community,’ then virtually any type of business could be similarly classified.”^[63] Likewise, in *Budd*, the court ruled that generalized benefits resulting from increased business activity related to the operation of a sand mine did not offset the potential harm to neighbors caused by the influx of heavy-truck traffic into the rural residential area.^[64]

A spot-zoning analysis must consider the impacts on neighbors and the surrounding community even if they are not located in the jurisdiction of the local government making the rezoning. In fact, in *Good Neighbors of South Davidson*,^[65] the court indicated it would give particular attention to the weighing of benefits and detriments in this situation because the neighbors had no political recourse for addressing what they deemed to be unreasonable zoning decisions:

[I]n the aftermath of the satellite annexation, when the authority to rezone the parcel shifted from the county to the Town of Denton, Piedmont’s neighbors suddenly found themselves outside looking in. Without a say in the annexation process, they had no one to defend their zoning interests

and no one to vote out of office for failing to do so. In sum, the Town of Denton could act on the property at issue without fear of political reprisal from the neighboring landowners of Davidson County. From our vantage point, there are precious few circumstances that could prove more detrimental to a surrounding community.^[66]

In concluding that this rezoning constituted illegal spot zoning, the court noted that the town's failure to consider the adverse impacts on the neighbors was resume "rather suggestive of a cavalier unreasonableness on the part of the town."^[67]

Relationship of Uses

The fourth factor in spot-zoning analysis is the relationship between the proposed uses and the current uses of adjacent properties. The greater the disparity, the more likely the rezoning is to be held illegal.

This was a consideration in the court's invalidation of the rezonings in the *Lathan*, *Godfrey*, and *Budd* cases, even though all three situations involved relatively large acreage: 11.4 acres, 17.45 acres, and 17.6 acres, respectively. In each case the rezoning was from low-density residential to industrial use. The magnitude of the change prompted the courts to look closely for a supporting rationale; they found none.^[68] Likewise, in both the *Allred* and the *Blades* cases, proposals to locate high-density multifamily projects in single-family-residential neighborhoods were invalidated.

On the other hand, the abovementioned *Chrismon* case resulted in only a modest change in the allowed uses: the landowner could carry on the storage and sale of grain under the original zoning; the rezoning allowed the storage and sale of agricultural chemicals. Further, the site was in the midst of an agricultural area that needed such services. Thus the court could conclude the following:

[T]his is simply not a situation . . . in which a radically different land use, by virtue of a zoning action, appears in the midst of a uniform and drastically distinct area. No parcel has been "wrenched" out of the Guilford County landscape and rezoned in a manner that "disturbs the tenor of the neighborhood." . . . In our view, the use of the newly rezoned tracts . . . is simply not the sort of drastic change from possible surrounding uses which constitutes illegal spot zoning.^[69]

In addition, limitations on the uses proposed in the zoning approval and site-specific development conditions can minimize the adverse impact on neighboring properties. For example, a conditional use district rezoning to allow a neighborhood convenience center was upheld in *Purser*, in part because "the development of the Center was governed by a conditional use site plan that was designed to integrate the Center into the neighborhood and insure that it would be in harmony with the existing and proposed residential uses on the surrounding property."^[70] By contrast, the failure to condition the rezoning on provisions that would mitigate harm to neighbors was a factor in the invalidation of the rezoning in *Etheridge*.^[71]

A change in the conditions is not required to justify a rezoning in North Carolina, but it can be an important factor in establishing that a proposed new zoning classification is compatible with surrounding land uses. For example, in *Allgood v. Town of Tarboro*,^[72] the rezoning of a twenty-five-acre tract from residential to commercial use was upheld in part on the basis that in the eight years between the initial adoption of zoning and the challenged rezoning, the surrounding area had substantially changed because of the expansion of an adjoining road, the extension of water and sewer lines, the construction of a school and an apartment complex nearby, and the annexation of the site by the city.

[1]. Appeal of Parker, 214 N.C. 51, 55, 197 S.E. 706, 709, appeal dismissed, 305 U.S. 568 (1938). See Chapter 29 for a detailed discussion of the presumption of validity and standards for judicial review.

[2]. Summers v. City of Charlotte, 149 N.C. App. 509, 562 S.E.2d 18, review denied, 355 N.C. 758, 566 S.E.2d 482 (2002).

[3]. N.C. Const. art. I, § 32.

[4]. N.C. Const. art. I, § 34.

[5]. N.C. Const. art. I, § 19. The “law of the land” provision of Section 19 is the equivalent of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

[6]. This approach is distinct from a focus on procedural due process, where more demanding quasi-judicial procedures could be employed to reduce potential abuse of zoning power. Here the inquiry is on the substance of the decision. Contract-zoning issues, which are frequently also raised in spot-zoning cases, are discussed in Chapter 13.

[7]. A police-power regulation adopted to advance private rather than the public interest is a violation of due process. State v. Ray, 131 N.C. 814, 42 S.E. 960 (1902) (invalidating ordinance requiring 7:30 p.m. closing of stores). Zoning ordinances must bear a substantial relation to protection of the public health, safety, morals, or general welfare. Helms v. City of Charlotte, 255 N.C. 647, 122 S.E.2d 817 (1961); In re O’Neal, 243 N.C. 714, 92 S.E.2d 189 (1956). See also Horton v. Gulledge, 277 N.C. 353, 177 S.E.2d 885 (1970).

[8]. “The legislative body must act in good faith. It cannot act arbitrarily or capriciously.” Walker v. Town of Elkin, 254 N.C. 85, 89, 118 S.E.2d 1, 4 (1961). The court also noted that if the conditions existing at the time of the rezoning were such as would have originally justified the proposed action, the rezoning would be upheld. The court has not, however, subsequently required any showing of changed circumstances as a prerequisite to rezonings. In Zopfi v. City of Wilmington, 273 N.C. 430, 438, 160 S.E.2d 325, 333 (1968), this due-process consideration was stated as a requirement that a rezoning not be arbitrary or discriminatory, that it be reasonably related to the public welfare, and that it be consistent with the purpose for which the city was authorized to enact zoning regulations. Also note that an invalid spot zoning is not a per se abuse of discretion mandating an award of attorney’s fees. Etheridge v. Cty. of Currituck, 235 N.C. App. 469, 481, 762 S.E.2d 289, 298 (2014).

[9]. Blades v. City of Raleigh, 280 N.C. 531, 546, 187 S.E.2d 35, 43 (1972).

[10]. 322 N.C. 611, 370 S.E.2d 579 (1988).

[11]. “Defendant argues, and the Court agrees, that as a general proposition, a municipality’s zoning actions are presumed to be reasonable and valid. However, when assessing a municipality’s actions that are construed to be spot zoning, we note that this Court has set aside the aforementioned presumption in favor of requiring the municipality to offer a ‘clear showing’ that there was a ‘reasonable basis’ for its

decision.” *Good Neighbors of S. Davidson v. Town of Denton*, 355 N.C. 254, 258 n.2, 559 S.E.2d 768, 771 n.2 (2002) (citations omitted). See also *Kerik v. Davidson Cty.*, 145 N.C. App. 222, 551 S.E.2d 186 (2001) (applying heightened review to alleged contract zoning).

[12]. G.S. 160D-605(b), added by S.L. 2005-426, §§ 6(a), (b). In 2019 the requirement was broadened to apply to all rezonings. S.L. 2019-111.

[13]. In *Chrismon* this was posed thusly: “[D]id the zoning authority make a clear showing of a reasonable basis for the zoning?” *Chrismon*, 322 N.C. 611, 627, 370 S.E.2d 579, 589 (1988).

[14]. *Allred v. City of Raleigh*, 277 N.C. 530, 178 S.E.2d 432 (1971); *Alderman v. Chatham Cty.*, 89 N.C. App. 610, 366 S.E.2d 885, review denied, 323 N.C. 171, 373 S.E.2d 103 (1988). Plan consistency is not mandatory in North Carolina, but the plan’s significance is heightened in spot-zoning cases.

[15]. Quoted in *Blades v. City of Raleigh*, 280 N.C. 531, 547, 187 S.E.2d 35, 44 (1972).

[16]. 254 N.C. 85, 89, 118 S.E.2d 1, 4 (1961).

[17]. 273 N.C. 430, 160 S.E.2d 325 (1968).

[18]. *Id.* at 437, 160 S.E.2d at 332.

[19]. *Blades*, 280 N.C. at 549, 187 S.E.2d at 45.

[20]. *Good Neighbors of S. Davidson v. Town of Denton*, 355 N.C. 254, 257 n.1, 559 S.E.2d 768, 771 n.1 (2002). The initial zoning of the property had been made by the county and the spot zoning was the initial zoning by the city upon assuming jurisdiction after annexation. The court rejected the contention that this was not a “reclassification.”

[21]. There is no set definition of the “surrounding area” to be considered. In many cases the comparison is to the immediately adjacent areas, but it is clear that the challenged rezoning must be viewed in context of the zoning of the immediate area. In *Musi v. Town of Shallotte*, 200 N.C. App. 379, 684 S.E.2d 892 (2009), the plaintiffs proposed examination of a one-mile radius around the rezoned area. The court looked at both a larger area and the dry-land area within a mile of the site.

[22]. *Friends of Mt. Vernon Springs, Inc. v. Town of Siler City*, 190 N.C. App. 633, 660 S.E.2d 657 (2008). The property was rezoned from agricultural-residential to heavy-industrial conditional on petition of a company seeking to operate a quarry and processing facility on the site.

[23]. 2 E.C. *Yokley, Zoning Law and Practice* § 13-3 at 207 (4th ed. 1978), quoted with approval in *Chrismon v. Guilford Cty.*, 322 N.C. 611, 626, 370 S.E.2d 579, 588 (1988).

[24]. 200 N.C. App. 379, 684 S.E.2d 892 (2009). See also *Covington v. Town of Apex*, 108 N.C. App. 231, 423 S.E.2d 537 (1992).

[25]. 242 N.C. App. 280, 774 S.E.2d 902, review denied, 368 N.C. 429, 778 S.E.2d 78 (2015).

[26]. *Chrismon*, 322 N.C. at 626, 370 S.E.2d at 588. See also *Dale v. Town of Columbus*, 101 N.C. App. 335, 399 S.E.2d 350 (1991). In some states, when the rezoning produces regulations less restrictive than those applicable to neighboring properties, the practice is termed “spot zoning,” and when the restrictions are more restrictive, it is termed “inverse spot zoning.”

[27]. 186 N.C. App. 30, 650 S.E.2d 55 (2007).

[28]. ___ N.C. App. ___, 808 S.E.2d 513 (2017).

[29]. *Chrismon*, 322 N.C. at 628, 370 S.E.2d at 589 (citations omitted). Courts in other states have emphasized the need to examine similar multiple factors in spot- and contract-zoning cases.

[30]. *Chrismon*, 322 N.C. at 627, 370 S.E.2d at 589 (1988).

[31]. *Good Neighbors of S. Davidson v. Town of Denton*, 355 N.C. 254, 258, 559 S.E.2d 768, 771 (2002); *Etheridge v. Cty of Currituck*, 235 N.C. App. 469, 762 S.E.2d 289 (2014).

[32]. 80 N.C. App. 285, 341 S.E.2d 739 (1986).

[33]. *Id.* at 288, 341 S.E.2d at 741. The facts of this case also illustrate the importance of considering the full range of uses available in a zoning district. The owner of the property in *Nelson* had sought the rezoning to allow construction of a small shopping center. The initial rezoning petition was denied. After the owner announced plans to construct low-income housing on the portion of the lot zoned for multifamily use, a second commercial-use rezoning petition was approved.

[34]. 355 N.C. 254, 559 S.E.2d 768 (2002). The court in *Childress*, 186 N.C. App. 30, 35–36, 650 S.E.2d 55, 60 (2007) also concluded that a fifty-acre rezoning where most of the surrounding property was uniformly zoned in a different district would be spot zoning if the two districts are sufficiently different.

[35]. 186 N.C. App. 17, 649 S.E.2d 920 (2007). The rezoning was requested in order to allow expansion of an existing nonconforming sawmill, kiln, and pallet-making operation.

[36]. 116 N.C. App. 168, 447 S.E.2d 449 (1994), review denied, 338 N.C. 524, 453 S.E.2d 174 (1994).

[37]. 61 N.C. App. 100, 300 S.E.2d 273 (1983). Compare *Rose v. Guilford County*, 60 N.C. App. 170, 298 S.E.2d 200 (1982), in which the court held that summary judgment was inappropriate when the rezoning of a 100-acre tract from an agricultural to a residential district that allowed mobile homes was challenged as arbitrary and capricious on spot- and contract-zoning grounds.

[38]. 89 N.C. App. 610, 366 S.E.2d 885, review denied, 323 N.C. 171, 373 S.E.2d 103 (1988). That an adjacent sixteen-acre tract owned by the same person had been rezoned to a mobile-home park some eleven years earlier did not change the court's conclusion that the immediate rezoning was unreasonable.

[39]. *Friends of Mt. Vernon Springs, Inc. v. Town of Siler City*, 190 N.C. App. 633, 660 S.E.2d 657 (2008).

[40]. *Mahaffey v. Forsyth Cty.*, 99 N.C. App. 676, 682, 394 S.E.2d 203, 207 (1990), review denied, 327 N.C. 636, 399 S.E.2d 327 (1991). In *Etheridge v. County of Currituck*, 235 N.C. App. 469, 762 S.E.2d 289 (2014), the court found illegal spot zoning even though property on one side was adjoined by property zoning for general business, with the other three sides and majority of surrounding area zoned agricultural. But see *Orange County v. Heath*, 278 N.C. 688, 180 S.E.2d 810 (1971), in which the court held that rezoning a fifteen-acre tract from a residential district to a mobile-home park was not spot zoning because it adjoined a five-acre tract already in legal use as a mobile-home park.

[41]. The court in *Childress* went so far as to rely on an affidavit submitted by the county manager to ascertain plan consistency. *Childress v. Yadkin Cty.*, 186 N.C. App. 30, 38, 650 S.E.2d 55, 61 (2007).

[42]. *Stutts v. Swaim*, 30 N.C. App. 611, 228 S.E.2d 750, review denied, 291 N.C. 178, 229 S.E.2d 692 (1976). There were two mobile-home parks in the extraterritorial-zoning area, and both were zoned for mobile-home use. One was three-fourths of a mile from the tract at issue; the other, two-and-one-half miles. The litigation was initiated some five-and-a-half years after the contested rezoning. The court applied a traditional laches analysis and allowed the litigation. G.S. 160A-364.1, which establishes a nine-month statute of limitations for challenging rezonings, was subsequently adopted.

[43]. 186 N.C. App. 17, 649 S.E.2d 920 (2007).

[44]. The county had issued permits allowing expansion of industrial buildings located within twenty feet of the plaintiff's residential property. The rezoning was sought when neighbors complained that this was the unlawful expansion of a nonconforming use.

[45]. 47 N.C. App. 357, 267 S.E.2d 30, review denied, 301 N.C. 92, 273 S.E.2d 298 (1980).

[46]. The planning board's reasons for a favorable recommendation were "(1) Because of how long it has been there. (2) You can't tell a man that he can't grow and will have to go up U.S. 74 to expand. (3) How long they have had the land." *Id.* at 359, 267 S.E.2d at 32.

[47]. 61 N.C. App. 100, 300 S.E.2d 273 (1983).

[48]. *Id.* at 104, 300 S.E.2d at 275. The court concluded that the rezoning constituted improper contract zoning as well as improper spot zoning.

[49]. 99 N.C. App. 676, 394 S.E.2d 203 (1990), review denied, 327 N.C. 636, 399 S.E.2d 327 (1991). See also *Etheridge v. Cty. of Currituck*, 235 N.C. App. 469, 762 S.E.2d 289 (2014) (plan inconsistency was conceded by county).

[50]. *Id.* at 683, 394 S.E.2d at 207. In *Good Neighbors of South Davidson*, 355 N.C. 254, 559 S.E.2d 768 (2002), the court noted that the record was silent on plan consistency and thus this factor could not be urged to show the reasonableness of the action taken.

[51]. 108 N.C. App. 231, 423 S.E.2d 537 (1992).

[52]. *Budd v. Davie Cty.*, 116 N.C. App. 168, 175, 447 S.E.2d 449, 453, review denied, 338 N.C. 667, 453 S.E.2d 174 (1994).

[53]. However, the governing board's attempted rezoning would have made this policy, which applied to all land zoned RA, inapplicable to this site. An argument can be made, then, that the rezoning is not inconsistent with the policies in the zoning ordinance. This reemphasizes the importance of being able to point to a comprehensive plan or to other planning studies, reports, and policies extrinsic to the zoning ordinance itself.

[54]. 55 N.C. App. 107, 284 S.E.2d 742 (1981), review denied, 305 N.C. 299, 290 S.E.2d 702 (1982).

[55]. The character of the surrounding neighborhood was a factor also in *Finch v. City of Durham*, 325 N.C. 352, 384 S.E.2d 8 (1989), though the spot-zoning issue was not explicitly addressed in this taking challenge. The rezoning from commercial to residential use, which was upheld in a taking challenge, was supported by policies of protecting an adjacent residential neighborhood and limiting commercial development to the opposite side of the adjacent interstate highway.

[56]. Note, however, that the statutes now provide that if a rezoning is adopted that is inconsistent with an adopted comprehensive plan, the plan is deemed amended by the rezoning. G.S. 160D-605(a).

[57]. 127 N.C. App. 63, 488 S.E.2d 277 (1997).

[58]. *Blades v. City of Raleigh*, 280 N.C. 531, 546, 187 S.E.2d 35, 43 (1972). See also *Covington v. Town of Apex*, 108 N.C. App. 231, 423 S.E.2d 537 (1992), review denied, 333 N.C. 462, 427 S.E.2d 620 (1993) (invalidating the rezoning of a former post-office site adjacent to a residential neighborhood from institutional use to an industrial district in order to accommodate an electronic-assembly operation).

[59]. 235 N.C. App. 469, 762 S.E.2d 289 (2014).

[60]. *Id.* at 473-74, 762 S.E.2d at 293-94.

[61]. *Chrismon v. Guilford Cty.*, 322 N.C. 611, 629, 370 S.E.2d 579, 590 (1988).

[62]. *Id.* at 633, 370 S.E.2d at 592.

[63]. *Mahaffey v. Forsyth Cty.*, 99 N.C. App. 676, 683, 394 S.E.2d 203, at 208 (1990), review denied, 327 N.C. 636, 399 S.E.2d 327 (1991).

[64]. *Budd v. Davie Cty.*, 116 N.C. App. 168, 175-77, 447 S.E.2d 438, 453-54 (1994), review denied, 338 N.C. 524, 453 S.E.2d 179 (1994). The court reached the same conclusion regarding significant neighborhood harms (increased truck traffic, noise, and dust) outweighing speculative economic benefits in *McDowell v. Randolph County*, 186 N.C. App. 17, 24-27, 649 S.E.2d 920, 926-27 (2007).

[65]. 355 N.C. 254, 559 S.E.2d 768 (2002).

[66]. *Id.* at 261, 559 S.E.2d at 773.

[67]. *Id.* at 262, 559 S.E.2d at 774.

[68]. See also *Id.*, 559 S.E.2d at 773; *Budd*, 116 N.C. App. at 178, 447 S.E.2d at 455 (rezoning would “destroy the tenor of the quiet residential and agricultural neighborhood”); *Mahaffey*, 99 N.C. App. 676, 394 S.E.2d 203 (holding that the auto-parts store allowed by rezoning was a significantly different use from the surrounding rural residential neighborhood).

[69]. *Chrismon v. Guilford Cty.*, 322 N.C. 611, 632, 370 S.E.2d 579 591-92 (1988). See also *Childress v. Yadkin Cty.*, 186 N.C. App. 30, 650 S.E.2d 55 (2007) (upholding rezoning where principal difference in the two districts was between allowing modular rather than manufactured housing at comparable densities).

[70]. *Purser v. Mecklenburg Cty.*, 127 N.C. App. 63, 70-71, 488 S.E.2d 277, 282 (1997).

[71]. *Etheridge v. Cty. of Currituck*, 235 N.C. App. 469, 762 S.E.2d 289 (2014). Even though this was a conditional zoning, the only condition imposed to mitigate neighborhood impacts of a recycling center was an eight-foot fence around the property.

[72]. 281 N.C. 430, 189 S.E.2d 255 (1972).

Also see this related post in Coates Canons:

Accessibility

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