



MEMORANDUM

Town of Nags Head

Planning & Development Department

To: Planning Board

From: Michael Zehner, Director of Planning & Development
Kelly Wyatt, Deputy Director of Planning & Development

Date: October 15, 2020; **updated November 16, 2020**

Subject: ~~Consideration of a Text Amendment Concerning the “Furniture Store” Use~~
Consideration of text amendments to the Unified Development Ordinance pertaining to uses allowed within the C-3, Commercial Services and C-2, General Commercial Zoning Districts, the “Furniture Store” and “Furniture Showroom” uses, the “Warehousing & Storage Facilities” use and storage as an accessory to these uses.

OVERVIEW AND BACKGROUND

At the October 7, 2020 Board of Commissioners meeting, Commissioner Fuller raised an interest in having a clearer definition for the Furniture Store use as contained in the Unified Development Ordinance (UDO). Currently, the definition of Furniture Store is as follows:

Furniture store means an establishment that sells goods and/or movable objects, intended to support various human activities such as seating, eating, and sleeping, for furnishing or improving housing units that make a room or other area ready for occupancy.

Commissioner Fuller suggested that the definition be something to the effect of, “a furniture store is a retail store that sells furniture to the general public; the structure may have incidental storage to the principal business.” Commissioner Fuller indicated that he believed the current definition to be too liberal, and that he would like it better defined; he requested that the Board agree to allow Staff to develop such an amendment and bring it to the Board as quickly as possible. There were no objections to this request, and the Mayor indicated that Staff was “so directed.”

In addition to the definition of Furniture Store, there is also a definition for Furniture Showroom, as follows, which may be relevant for the Planning Board to consider:

Furniture showroom means a retail establishment that utilizes large, open floor areas to display furniture or mattresses.

While Furniture Store is listed as a permitted use (only within the C-2 zoning district), Furniture Showroom is not specifically listed or otherwise referenced as being prohibited. From a parking standpoint, these uses or areas of a use are treated differently, with Furniture Stores being included along with all other General Retail uses (requiring one parking space for each 250 square feet of gross floor area, plus 1 parking

Consideration of text amendments to the Unified Development Ordinance pertaining to uses allowed within the C-3, Commercial Services and C-2, General Commercial Zoning Districts, the “Furniture Store” and “Furniture Showroom” uses, the “Warehousing & Storage Facilities” use and storage as an accessory to these uses.

space for each employee, but no less than 2 employee parking spaces for each retail unit or establishment), and Furniture Showrooms having a specific parking requirement of 1 (one) parking space for each 500 square feet of gross floor area.

Prior to the UDO, Furniture Store and Furniture Showroom were not specifically identified as uses, except that there were specific lighting standards for a “furniture or appliance store,” and the aforementioned parking required for a “Furniture Showroom” was instead specified for a “Furniture or appliance store.” Staff understands that the sale of furniture (i.e. a furniture store) was viewed as general retail; case in point, the only two businesses meeting the current definition of Furniture Store, Mattress Xpress and Outer Banks Furniture (both with areas meeting the current definition of Furniture Showroom) are located at the Outer Banks Mall, within the Village SPD-C district, which did not formerly and does not now specify Furniture Store or Furniture Showroom as a specifically allowed use.

A distinction between a Furniture Store and Furniture Showroom was discussed during the development of the UDO. It is understood that there was a consideration to establishing a distinction between a retail store that may sell furniture, and a Furniture Store that commonly includes a Furniture Showroom. Staff is of the opinion that this distinction, or lack thereof, may be important to clarify at this time.

The Planning Board discussed the Commissioners’ direction and the considerations above at their meeting on October 20, 2020. In their discussion, the Planning Board had questions regarding the intent and purpose of the requested change, wanting to better understand what the Commissioners were intending to protect against, whether their concern was related to the use or the opportunity for too much associated storage, and whether the Commissioners believed there to be an actual or necessary distinction between a furniture store and a furniture storeroom. The Board suggested that it would be helpful to clarify what uses or aspects of uses should be allowed or prohibited, and assuming there was an intent to guard against too much associated storage, suggested that one approach may be to establish a standard for furniture stores, if not other retail, related to a percentage of sales versus storage. Ultimately, the Board requested that Staff relay their questions to the Board of Commissioners for additional guidance, to ensure that the proposed text amendment was responsive to the Commissioners’ intent, and continued consideration of the text amendment to their next meeting on November 17, 2020.

Staff presented the Board’s request to the Commissioners at their meeting on November 4, 2020. During their meeting, members of the Board of Commissioners provided the following feedback regarding their intent:

- 1. To avoid, through lack of clarity or specificity with regard to the definition of uses, having uses only appropriate within the C-3 zoning district from being located within the C-2 zoning district; this goal intends to recognize**

Consideration of text amendments to the Unified Development Ordinance pertaining to uses allowed within the C-3, Commercial Services and C-2, General Commercial Zoning Districts, the “Furniture Store” and “Furniture Showroom” uses, the “Warehousing & Storage Facilities” use and storage as an accessory to these uses.

the intent of the respective districts, with the C-2 district intended for the location of businesses and uses that offer goods and services to residents and visitors, and the C-3 district intended for the location of high-intensity commercial uses, not appropriate elsewhere in Town.

- 2. To clarify that while furniture stores are allowed within the C-2 zoning district, and furniture showrooms are allowed within the C-2 zoning district, that only furniture stores, and not furniture showrooms, are allowed as part of a mixed-use development.**
- 3. To clarify that furniture stores and furniture showrooms, if not all general retail sales businesses, are to be open to the general public.**

POLICY CONSIDERATIONS

The Town’s Comprehensive Plan contains no specific policies pertaining to Furniture Stores **or Furniture Showrooms**. **However, with respect to uses that may be appropriate within the C-2 and C-3 districts, Section 3.2.3., Permitted and Prohibited Land Uses, is helpful in that it clarifies that appropriate and permitted general commercial uses, those which may be found in the C-2 district, include:**

- **Retail**
- **Office**
- **Banking institutions**
- **Professional and personal services**
- **Restaurants and eating establishments**
- **Indoor and outdoor entertainment**
- **Automobile service and care facilities**
- **Equipment rental, sales and service**
- **Mixed use**

And further, that appropriate and permitted commercial services, those which may be found in the C-3 district, include:

- **Concrete processing**
- **Storage and warehousing**
- **Screen printing**
- **Fabricating**
- **Contractor and materials sales, service, and storage**

STAFF RECOMMENDATION

Previously, Staff had recommended that should Should the Board wish to consider a text amendment specifically responding to the **original** direction of the Board of

October 15, 2020 Memo; **updated November 16, 2020**
**Consideration of text amendments to the Unified Development Ordinance
pertaining to uses allowed within the C-3, Commercial Services and C-2, General
Commercial Zoning Districts, the “Furniture Store” and “Furniture Showroom”
uses, the “Warehousing & Storage Facilities” use and storage as an accessory to
these uses.**

Commissioners, Staff would recommend the following changes to the definition of Furniture Store:

Furniture store means ~~an~~ a retail establishment that primarily sells, to the general public, furniture goods and/or movable objects, intended to support various human activities such as seating sitting, eating, and sleeping;; the establishment may also sell home furnishings or related goods incidental to the sale of furniture for furnishing or improving housing units that make a room or other area ready for occupancy. Storage area and the storage of furniture “on-hand” or “in-stock” for same-day transactions is commonly limited.

Further, Staff previously suggested that ~~As noted under Overview and Background,~~ should the Board wish to consider addressing the separate terms and definitions for Furniture Store and Furniture Showroom, Staff would recommend deleting both terms and definitions, and adopting a new term and definition, as follows:

Furniture store/showroom means a retail establishment that primarily sells, to the general public, furniture intended to support various human activities such as sitting, eating, and sleeping; the establishment may also sell home furnishings or related goods incidental to the sale of furniture. Furniture available for purchase is commonly displayed in large, open areas, and is not available “on-hand” or “in-stock” for same-day transactions, with limited storage of inventory.

And finally, in ~~In~~ addition, under this alternative approach, Staff **recommended** ~~would recommend~~ that:

- the Furniture Store use as included in Sections 6.6 (Table of Uses), 7.32.2., and 10.37.1.3. be changed to Furniture Store/Showroom; and
- that Table 10-2, Required Parking by Use, be amended by deleting Furniture Showroom as a separate use and Furniture Store from the list of General Retail uses, and that Furniture Store/Showroom be added as a use with the following required parking:
 - One (1) parking space for each 500 square feet of gross floor dedicated to open display area of furniture, and one (1) parking space for each 250 square feet of gross floor for all other areas of the establishment; additionally, one (1) parking space shall be provided for each employee, with no less than two (2) employee parking spaces for each establishment.

Based upon the further input and feedback of the Board of Commissioners, Staff would now make the following recommendations:

Consideration of text amendments to the Unified Development Ordinance pertaining to uses allowed within the C-3, Commercial Services and C-2, General Commercial Zoning Districts, the “Furniture Store” and “Furniture Showroom” uses, the “Warehousing & Storage Facilities” use and storage as an accessory to these uses.

- Staff would recommend deleting both terms and definitions for Furniture Store and Furniture Showroom, and adopting a new term and definition, as follows:

Furniture store/showroom means a retail establishment that sells, to the general public, furniture intended to support various human activities such as sitting, eating, and sleeping; the establishment may also sell home furnishings or related goods incidental to the sale of furniture. Furniture available for purchase may be and is commonly displayed in large, open areas, and is not available “on-hand” or “in-stock” for same-day transactions, with limited storage of inventory.

- That the Furniture Store use as included in Sections 6.6 (Table of Uses), 7.32.2., and 10.37.1.3. be changed to Furniture Store/Showroom.
- That Table 10-2, Required Parking by Use, be amended by deleting Furniture Showroom as a separate use and Furniture Store from the list of General Retail uses, and that Furniture Store/Showroom be added as a use with the following required parking:

One (1) parking space for each 500 square feet of gross floor dedicated to open display area of furniture, and one (1) parking space for each 250 square feet of gross floor for all other areas of the establishment; additionally, one (1) parking space shall be provided for each employee, with no less than two (2) employee parking spaces for each establishment.

- That a term and definition for Warehousing & Storage Facilities be added, as follows:

Warehousing & storage facilities means a use primarily oriented to the receiving, holding, and shipping of packaged or bulk materials or products. With the exception of loading and parking facilities, such uses are contained entirely within an enclosed building. Uses where fifty percent (50%) or more of the floor area is dedicated to these activities shall constitute a warehousing & storage facility.

- That the term General Contractor’s Office be changed to Building Contractor’s Office.
- That supplemental regulations for Building Contractor’s Office be added, as follows:

Consideration of text amendments to the Unified Development Ordinance pertaining to uses allowed within the C-3, Commercial Services and C-2, General Commercial Zoning Districts, the “Furniture Store” and “Furniture Showroom” uses, the “Warehousing & Storage Facilities” use and storage as an accessory to these uses.

Building contractor’s offices are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

Building contractor’s offices where thirty percent (30%) or more of the floor area is dedicated to tools, equipment, machinery, building materials, fixtures, appliances, or the like, actively used at the location or otherwise stored, shall only be allowed within the C-3 zoning district.

- That the Warehouse or Wholesale Retail use be identified and specifically noted as a prohibited use, and a term and definition be added, as follows:

Warehouse or wholesale retail means a use that provides goods directly to consumers, often as a club or on a membership basis, in bulk quantities and/or with shipping packaging intact.

- That the definition of Retail, General be amended, as follows:

Retail, general means establishments open to the general public that provide goods directly to the consumer where such goods are available for immediate purchase and removal from the premises by the purchaser.

- That an accessory use Accessory Commercial Storage be identified and permitted with supplemental regulations in the Commercial zoning district, as follows:

Accessory commercial storage is permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

All non-residential uses shall be allowed accessory storage of goods, inventory, materials, supplies, or the like, with such area dedicated to such storage to be less than thirty percent (30%) of the floor area of the use.

With respect to the Commissioners’ suggestion that it be clarified that only furniture stores, as opposed to furniture showrooms, be allowed as part of a mixed-use development, Staff has not been able to locate any best practice examples of communities recognizing these as two separate and distinct uses. Further, Staff believes that the only furniture store businesses located within Town, both have showrooms. Staff believes that

October 15, 2020 Memo; **updated November 16, 2020**
**Consideration of text amendments to the Unified Development Ordinance
pertaining to uses allowed within the C-3, Commercial Services and C-2, General
Commercial Zoning Districts, the “Furniture Store” and “Furniture Showroom”
uses, the “Warehousing & Storage Facilities” use and storage as an accessory to
these uses.**

one or more of the recommendations above, in concert with existing regulations that limit the floor area of buildings, will address the intent of the Commissioners to allow for commercial businesses in the C-2 district, while limiting businesses with significant levels of storage to the C-3 district.

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

3.5.3. Action by the Planning Board.

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

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

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

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

3.5.4. Action by the Board of Commissioners.

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

3.5.4.1. Before an item is placed on the consent agenda to schedule a public hearing, the Planning Board’s recommendation on each proposed amendment must be received by the Board of Commissioners. If no recommendation is received from the Planning Board within 30 days from the date when submitted to the Planning

October 15, 2020 Memo; updated November 16, 2020
**Consideration of text amendments to the Unified Development Ordinance
pertaining to uses allowed within the C-3, Commercial Services and C-2, General
Commercial Zoning Districts, the “Furniture Store” and “Furniture Showroom”
uses, the “Warehousing & Storage Facilities” use and storage as an accessory to
these uses.**

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

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

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

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

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

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

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

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

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

October 15, 2020 Memo; updated November 16, 2020
**Consideration of text amendments to the Unified Development Ordinance
pertaining to uses allowed within the C-3, Commercial Services and C-2, General
Commercial Zoning Districts, the “Furniture Store” and “Furniture Showroom”
uses, the “Warehousing & Storage Facilities” use and storage as an accessory to
these uses.**

*request or application for amendment to the
Comprehensive Plan.*

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

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

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

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