



MEMORANDUM

Town of Nags Head

Planning & Development Department

To: Planning Board

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

Date: November 13, 2020

Subject: Consideration of a text amendment to the Unified Development Ordinance pertaining to the reduction of side yard setbacks for corner lots abutting unimproved rights-of-way

OVERVIEW & BACKGROUND

At their November 4, 2020 meeting, the Board of Commissioners heard a request from Derek and Kristi Stallings to consider the abandonment of an existing paper street, Warren Street, or a portion thereof; the Stallings own the lot located at 6316 S. Virginia Dare Trail, abutting the south side of the unimproved 20 ft. right-of-way. Regardless of whether the street is improved or not, as a corner lot, the minimum corner lot setback of 15 feet from the property line/right-of-way would be applied to any construction of a principal structure on this lot. The Stallings plan to construct a dwelling on this lot; by abandoning the unimproved right-of-way, their property would have been extended to the center line of the former right-of-way, thereby increasing the lot area of the property (as well as the adjoining lot to the north) and resulting in the lot no longer be considered a corner lot, and therefore not being subject to a greater side yard setback (15' versus 8').

It was the consensus of the Board of Commissioners that they were not inclined to abandon the right-of-way as requested, and further that they were generally not in favor of abandoning any unimproved rights-of-way within the Town as there were numerous potential public use benefits such as open space, drainage, and future pedestrian access. The Board of Commissioners directed staff to look into potential options for reducing the minimum 15-foot corner lot setback back requirement for cases such as that of the Stallings and similar.

Section 8.6.3.4 of the Unified Development Ordinance, as follows, does currently offer a mechanism for reduction of the corner lot setback under certain circumstances:

8.6.3. Yard Requirements.

8.6.3.4. Corner Lots. In the case of a corner lot, to ensure adequate sight clearance, the minimum width of the side yard adjacent to the right-of-way shall be no less than fifteen (15) feet, except in the case of nonconforming lots of record that are less than 10,000 square feet in lot area and sixty (60) feet or less in lot width, in which case the minimum setback shall be twelve (12) feet

This provision would not offer relief to the Stallings as their property is greater than 10,000 square feet in area and has a lot width that exceeds 60 feet.

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As information, Staff is aware of the following existing unimproved rights-of-way within the Town, along with their zoning district designation:

- Morning Dove Street, R-2 Medium Density Residential
- Unnamed right-of-way located off W. Danube Street, running north to south, west of 4410 S. Croatan Highway (Christian Science Society), R-2 Medium Density Residential
- Fourth Street, north of Post Office, R-2, Medium Density Residential
- Curlew Street, improved with pedestrian access/walkway, C-2, General Commercial.
- Diamond Street, south of St. Andrews Church, C-2, General Commercial.
- Dixie Street, C-2 General Commercial
- Dowitcher Street, portion east of Advanced Chiropractic, C-2, General Commercial.
- Warren Street/Forrest Street, north of Forbes Candy, C-2, General Commercial, and west of 158, C-2 and R-3, High Density Residential
- Egret Street, east of KFC/Taco Bell, C-2 General Commercial

Staff is proposing two options for the Planning Board's consideration as it pertains to a reduction of the corner lot setback; those options are outlined below:

- Option A: Revise Section 8.6.3.4, Corner Lots, in such a way that the reduction from 15 ft. to 12 ft. would apply all corner lots, regardless of lot area and lot width. As part of this it may also be important to resolve any ambiguity and confirm that the additional setback applies to both improved and unimproved rights-of-way.
- Option B: Revise Section 8.6.3.4, Corner Lots, in such a way that lots adjacent to an improved right-of-way may take advantage of a reduction to 12 ft. as currently written and lots adjacent to an unimproved right-of-way may take advantage of reduced setback consistent with the setback for the zoning district in which it is located when the following criteria are met:
 - All other lots abutting the unimproved right-of-way, and which are developed, do not derive access through the paper street/unimproved right-of-way;
 - The subject lot would be prohibited from deriving access through such right-of-way; and
 - The proposed principal use of the property upon which the reduction is being sought is residential.

POLICY CONSIDERATIONS

The Town's Comprehensive Plan contains no specific policies pertaining to paper streets/unimproved rights-of-way.

STAFF RECOMMENDATIONS

Below are two options for the Planning Board's consideration with regard to direction provided by the Board of Commissioners concerning the relaxation of side yard setbacks on corner lots adjacent to unimproved rights-of-way within the Town. Planning staff will be available to participate in the discussion; however, generally, Staff does not have concerns with either option as proposed.

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Option A

8.6.3.4. Corner Lots. In the case of a corner lot being developed for a commercial use, to ensure adequate sight clearance, the minimum width of the side yard adjacent to the right-of-way shall be no less than fifteen (15) feet, except in the case of nonconforming lots of record that are less than 10,000 square feet in lot area and sixty (60) feet or less in lot width, in which case the minimum setback shall be twelve (12) feet. In the case of a corner being developed for a residential use, the maximum width of the side yard adjacent to the right-of-way shall be no less than twelve (12) feet regardless of the lot area and lot width.

Option B

8.6.3.4. Corner Lots. In the case of a corner lot abutting an improved right-of-way, to ensure adequate sight clearance, the minimum width of the side yard adjacent to the right-of-way shall be no less than fifteen (15) feet, except in the case of nonconforming lots of record that are less than 10,000 square feet in lot area and sixty (60) feet or less in lot width, in which case the minimum setback shall be twelve (12) feet. In the case of a corner lot abutting an unimproved right-of-way, the UDO Administrator may approve a reduced corner lot side yard setback consistent with the side yard setback requirement of the zoning district in which the property is located when the following criteria is met:

- a. All other lots abutting the unimproved right-of-way, and which are developed, do not derive access through the paper street/unimproved right-of-way;
- b. The lot subject to the reduced side yard setback is prohibited from deriving access through the unimproved right-of-way; and
- c. The proposed principal use of the property upon which the reduction is being sought is residential.

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

3.5.3. Action by the Planning Board.

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

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

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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 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.

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

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

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

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

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

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

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

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