



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: March 12, 2021

Subject: Consideration of text amendments to the Unified Development Ordinance pertaining to the permitted zoning district location and supplemental regulations for hotels

OVERVIEW AND BACKGROUND

At their February 17, 2021 meeting, the Board of Commissioners directed the initiation of a text amendment that would allow hotels within the CR zoning district. The Board wished to consider this amendment as an alternative to the text amendment addressing hotels as a nonconforming use within the CR zoning district. The Board has scheduled a public hearing to consider both amendments at their meeting on April 7, 2021.

Related, please find attached a letter from Alex Moore, President, Seaboard Hotels, dated March 2, 2021, concerning the text amendment addressing hotels as a nonconforming use.

CODE CONSIDERATIONS

It is Staff's understanding that the Commissioners' intent was to impose restrictions on hotels allowed within the CR district that were essentially the same as those that existed prior to the adoption of the UDO. The following were the specific standards, including dimensional requirements, that were applicable to hotels located in the CR zoning district:

- a. *A hotel lot shall have a minimum width of 150 feet.*
- b. *A minimum setback of 45 feet is required from the right-of-way line of South Virginia Dare Trail (NC 12) or South Old Oregon Inlet Road (NC 1243).*
- c. *A minimum setback for any structure from a side yard property line other than a property line along a state or town street right-of-way shall be ten feet. 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 the greater of either the front yard setback or side yard setback. For hotel buildings higher than 35 feet, the side yard setback shall be ten feet plus an additional one foot for each foot over 35 feet.*
- d. *The maximum height of a structure shall be 60 feet.*

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- e. Maximum lot coverage for hotel sites with an accessory fishing pier shall not exceed 45 percent and shall otherwise be in accordance with subsection (d)(2) of this section.*
- f. A minimum of 50 percent of the required setbacks on the north, south, east and west shall be left undeveloped and landscaped as open space. Subterranean sewage systems and repair areas are allowed in the required setbacks.*
- g. The density of hotel units shall not exceed 16 hotel units or hotel efficiency units for the first acre and 20 hotel units or hotel efficiency units for each additional acre.*
- h. Hotel units shall be at least 300 square feet in area. Hotel efficiency units shall be at least 400 square feet in area. No hotel unit or hotel efficiency unit shall be greater than 700 square feet in area.*
- i. Unless the public safety department has approved an alternate life safety/fire evacuation plan, a 12-foot wide paved vehicular access along all four sides of principal structures shall be provided suitable for firefighting and rescue equipment. The edge of the paved access nearer the structure shall be no closer than ten feet, nor farther than 30 feet, from the sides of the structure.*
- j. Containers for garbage and refuse shall be provided in accordance with chapter 30 of this Code. Areas for screened dumpsters shall be provided so as to be out of the traffic flow and accessible to garbage trucks at all times.*
- k. A sidewalk or boardwalk constructed to provide a grade separation from vehicular traffic of at least six inches shall connect all principal buildings on the site except where passageways cross traffic lanes. Separate buildings shall be connected with pedestrian passageways that are striped when crossing traffic lanes.*
- l. No portion of any building shall be farther than 250 feet or closer than 50 feet to a fire hydrant.*
- m. Fire hydrants shall be protected from traffic in accordance with section 20-1 and shall be marked with painted stripes on the pavement within the protected area.*
- n. The structures shall be sprinkler protected in accordance with section 20-121 et seq. A fire flow test of the water supply for the sprinkler system serving or intended to serve the structures shall be conducted at the developer's expense by the town fire department or by an independent testing firm. If the test is conducted by an independent testing firm, it shall be made under the direct supervision of the town fire chief or his designee. A fee, in accordance with the most recently adopted consolidated fee schedule, shall be paid by the developer. If the flow is found to be deficient according to the insurance service office standards applicable to the town, the developer shall bring the fire flow up to the established requirements set out in the insurance service office standards. The fire flow test shall be made prior to the issuance of a building permit.*

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- o. Automatic emergency electric generators, to provide lighting in hallways and stairwells during periods of public utility power outages, shall be installed and tested regularly at the expense of the developer.*

- p. A minimum of 600 feet of frontage along a street shall be required before two accessways are permitted to the same street. A minimum of 900 feet of frontage shall be required before three accessways are permitted. No hotel development shall have more than three accessways to one street. The accessways shall comply with the following standards:*
 - 1. Accessways shall not be less than 30 feet or more than 40 feet in width at their intersection with the property line and shall be installed with curbs of asphalt or concrete at street connections to prevent damage to roadways.*

 - 2. The principal accessways shall have an exit lane for left turns where permitted and an exit lane for right turns and one entrance lane. The lanes shall be appropriately marked to indicate exit and entrance.*

 - 3. At its intersection with the property line, an accessway shall not be less than 100 feet from another accessway or 50 feet from a corner of the property. At least one accessway will be allowed for each hotel development.*

- q. Each hotel site with its buildings, parking lots and driveways shall be physically separated from each adjoining street by a curb or other suitable barrier to prevent unchanneled vehicular ingress or egress.*

- r. Lighting in accordance with article IX of this chapter of this chapter shall be installed in all parking and service areas.*

- s. Where the provisions of this subsection are in conflict with the provisions of subsection (d) of this section, dimensional requirements, the more stringent of the provisions shall apply.*

- t. Hotel sites may include the following accessory uses: fishing pier (with CAMA authorization), restaurant, indoor entertainment facility, indoor public assembly, retail, office and on-site rental of beach chairs and umbrellas provided that:*
 - 1. Storage of such items, overnight and during hours of operation shall be located westward of the static line and shall not be visible from the beach.*

 - 2. Beach chairs and umbrellas to be placed upon the beach shall contain no commercial signage. Property identifiers such as initials and numbering shall be located on the interior or underside of any chair or umbrella. Any other signage shall not be visible from the beach.*

 - 3. Placement of beach chairs and umbrellas upon the beach shall not restrict or impede the flow of vehicular, pedestrian or emergency services traffic. All*

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- public access points shall be free and clear of all obstructions and rental equipment for a minimum distance of 50 feet in any direction.*
- 4. All transactions involved in the operation of this rental service, including tips, shall occur inside the principal structure, i.e.; the hotel or west of the static line.*
 - 5. Rentals shall be limited to hotel patrons.*
 - 6. Under no circumstance shall beach chairs and umbrellas be left on the beach or be east of the static line overnight.*
 - 7. At the close of business hours the beach upon which rentals occur shall be cleaned of all loose trash and debris.*
 - 8. Beach chairs and umbrellas shall only be set up when requested by the customer, beach chairs and umbrellas shall not be pre-set.*
 - 9. Emergency services personnel have the right to move beach chairs and umbrellas as necessary to ensure a clear line of sight for safety purposes.*
 - 10. Any violation of these regulations may result in any of the following actions:*
 - i. Removal of equipment left on the beach overnight;*
 - ii. Issuance of civil penalty pursuant to section 1-6 of this Code; or*
 - iii. Immediate revocation of the zoning permit.*
- u. A pre-application conference shall be held between the planning board and the applicant. The applicant shall present at least a survey and conceptual site plan.*

Under **Staff Recommendation** below, applicable standards for hotels in the CR district, consistent with those for hotels allowed in the C-1, C-2, and HO districts, are shown to be inserted within the table provided under Section 7.12.1. Regulations not addressed within the former regulations have been highlighted.

POLICY CONSIDERATIONS

In general terms, the policies in the Comprehensive Plan support the development of new hotels in specific areas of the Town that do not include the oceanfront and CR zoning district, while supporting flexibility with respect to preexisting hotels. The Comprehensive Plan specifically notes that “Large scale hotels and multi-family buildings with higher heights are incompatible with the desired scale and character of the oceanfront and are difficult to manage with respect to beach erosion. In the future, new oceanfront structures should generally be limited to 5,000 square feet of heated area and 35 feet in height (this could be higher to accommodate architectural requirements).”

STAFF RECOMMENDATION

To address the direction by the Board of Commissioners, it is Staff’s recommendation that the following amendments to the UDO be adopted:

- Section 6.6, Table of Use and Activities, be amended to delete an erroneous “s” from “HOTELS,” and within the column associated with the CR zoning district, add a “CS” to denote that the use requires a conditional use permit and is subject to supplemental regulations.
- That Section 7.12, Hotels, be amended as follows:

SECTION 7.12 HOTELS.

Hotels are permitted in accordance with Section 6.6, Table of Uses and Activities, provided the following additional requirements and conditions are met:

7.12.1. Dimensional Requirements.

TABLE 7-2: DIMENSIONAL REQUIREMENTS FOR HOTELS				
	CR	C-1	C-2	HO
Lot Width	150 feet	100 feet	150 feet	
Front Setback	The minimum front yard along property lines abutting the right-of-way line of S. Virginia Dare Trail/NC 12 or S. Old Oregon Inlet Road/NC 1243 shall be forty-five (45) feet.	15 feet; portions of buildings greater than two stories shall be set back an additional 10 feet.	30 feet; portions of buildings greater than two stories shall be set back an additional 10 feet.	15 feet; portions of buildings greater than two stories shall be set back an additional 10 feet for every story over two. In any instance the setback need not exceed 30 feet.
Rear Setback	25 feet	25 feet		
Side Setback	A minimum side yard of ten (10) feet is required from any side property line, other than a side property line along a street right-of-way; for buildings with a height greater than thirty-five (35) feet, such minimum required side yard shall increase by one (1) foot for each foot in height	10 feet; 15 feet for corner lot; portions of buildings greater than two stories shall be set back an additional 10 feet.		10 feet; 15 feet for corner lot; portions of buildings greater than two stories shall be set back an additional 10 feet for every story over two. In any instance the setback need not exceed 30 feet.

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	CR	C-1	C-2	HO
	greater than thirty-five (35) feet. For any side property lines along a street right-of-way, the minimum required yard shall be no less than the minimum required front yard or side yard, whichever is greater.			
Height	60 feet	35 feet		60 feet
Open Space	A minimum of fifty percent (50%) of the area established by each minimum setback shall be undeveloped and landscaped as open space. Underground components of wastewater systems are allowed to be located within minimum required setbacks.	50% of side yard to remain as open space.	50% of side yard to remain as open space.	50% of side yard to remain as open space. Minimum 5 feet, Maximum 10 feet.
Lot Coverage	40%	55%		65%
Density	For the first acre, a maximum of 16 units shall be allowed; 20 units per acre shall be allowed for each additional acre, with the total allowable number of units prorated based upon partial acreage in excess of one acre.	Maximum 20 units per site.	None	None
Unit Size (Room)	Minimum 300 sq. ft.; Maximum 700 sq. ft.	Minimum 300 sq. ft, Maximum 700 sq. ft.		
Unit Size (Efficiency)	Minimum 400 sq. ft.; Maximum 700 sq. ft.	Minimum 400 sq. ft, Maximum 700 sq. ft.		
Unit Size	Minimum 400 sq.	Minimum 400 sq. ft, Maximum 900 sq. ft.		Minimum 400 sq. ft,

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TABLE 7-2: DIMENSIONAL REQUIREMENTS FOR HOTELS				
	CR	C-1	C-2	HO
(Suite)	ft.; Maximum 700 sq. ft.	Up to 33% of units can be suites.		Maximum 1,200 sq. ft. Up to 33% of units can be suites.
Minimum Units Per Building	2	2		
Building Separation	20 ft; A sidewalk or boardwalk constructed to provide a grade separation from vehicular traffic of at least six inches shall connect all principal buildings on the site. Separate buildings shall be connected with pedestrian passageways that are striped when crossing traffic lanes.	20 ft; A sidewalk or boardwalk constructed to provide a grade separation from vehicular traffic of at least six inches shall connect all principal buildings on the site. Separate buildings shall be connected with pedestrian passageways that are striped when crossing traffic lanes.		
Ocean/Sound Access	NA	Hotel parcels east of US 158 must be within 1,000 feet in a straight-line distance to a public ocean access. The access must consist of a minimum five-foot wide improved pedestrian path. Hotels west of US 158 must provide direct, private soundfront access	Hotel parcels east of US 158 must be within 1,000 feet in a straight-line distance to a public ocean access. The access must consist of a minimum five-foot wide improved pedestrian path. Hotels west of US 158 must provide direct, private soundfront access	None.
Accessory Uses	Fishing pier (with CAMA authorization), restaurant, indoor entertainment facility, indoor public assembly, retail, office and on-site rental of beach chairs and umbrellas.	<p>Retail shops, offices, restaurants, indoor entertainment facilities, indoor public assembly for the benefit of occupants, guests and the general public, cottage court.</p> <p>Hotel allowed as accessory to other commercial.</p> <p>Dormitory for employee housing.</p> <p>Single-family dwelling for employee/owner housing.</p>		<p>Uses permitted as accessory to hotels in the C-2 district and outdoor recreation activities as allowed in the HO district.</p> <p>Hotel allowed as accessory to other commercial.</p> <p>Dormitory for employee housing.</p> <p>Single-family dwelling for employee/owner housing.</p>

7.12.2. Dormitory for Employee Housing.

Hotels may have accessory, employee dormitories intended to furnish group housing for employees provided the following conditions are met:

7.12.2.1. All accessory employee dormitories must be located on the same site as the hotel use.

7.12.2.2. An employee dormitory shall not contain more than one (1) kitchen.

7.12.2.3. The square footage of an employee dormitory building shall be limited to no more than twenty-five (25) percent of the square footage of the principal hotel building(s) on the site.

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.

The Planning Board should also take into account the following UDO provisions applicable to review and action on the text amendment 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.*

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.

Attachments:

1. Letter from Alex Moore, President, Seaboard Hotels, dated March 2, 2021



March 2, 2021

VIA EMAIL

Michael Zehner
Director Planning & Development
Town of Nags Head
5401 South Croatan Highway
Nags Head, NC 27959

Re: Support for UDO Text Amendments Pertaining to Nonconforming Hotels

Dear Michael:

Thank you and the rest of the officials from the Town of Nags Head for meeting with us this past week to discuss the reconsideration of the text amendments to the UDO pertaining to nonconforming hotels. It was a pleasure putting faces to all the names and getting the opportunity to delve into both the rationale behind and the practical import of the proposed changes to the UDO.

As first- and second-generation owner-operators of the Surf Side Hotel, we want to express our strong support for the further consideration and enactment of these important changes to the UDO. These amendments would provide owners of legacy hotels in Nags Head with a clear path and a potential economic rationale for investing in properties that are 30-50 years old.

In our case, operating the Surf Side as an existing nonconforming property under the code has resulted in a delay of material renovations over the past several years and protracted internal discussions as to the property's highest and best use. Conversely, the introduction of the proposed text amendments to the UDO have led us to strongly reconsider the merits of a major investment and renovation to the improvements and grounds at the Surf Side.

At this time, we would, however, like to offer two suggestions to the proposed text amendments for further consideration by you, your staff, the Planning Board and the Board of Commissioners.

1) Provide Greater Flexibility with Respect to Dimensional Requirements

A very real challenge faced by beachfront legacy hotel owners is the lack of, or insufficient design for, common areas and amenities to meet modern tastes and demands of today's vacationers. Most hotels built in the 1960s – 1980s focused on providing guests with a room and access to the beach. Common elements may have included a pool and modest guest reception, but few operators foresaw the demands for grander lobbies, expansive breakfast rooms, and other amenities such as fitness centers and spas.

Significant discussion of the proposed UDO amendments has centered around the “right” dimensional requirements. It appears that planning staff initially proposed use of the C-2 requirements but were urged by the Board of Commissioners to also consider the original CR requirements. The most recent staff proposal appears to be a hybrid of both.

While any of these proposals has merit, the most recent version may offer legacy hotel owners the least flexibility of any set of requirements; the most restrictive setbacks have been imported from the former CR code in addition to the most restrictive density and lot coverage requirements that apply in the current C-2.

We would encourage consideration of the requirements found in the HO district that do not prescribe density limits based on unit count and which offer a greater level of lot coverage. This combination would provide legacy hotel owners with the most discretion to provide for the missing common elements at many older properties while also ensuring that room counts can be adjusted to generate the revenues that major renovations will require.

2) Allow for Integration of Currently Owned Adjacent Properties

We would like to ensure that whatever dimensional requirements are ultimately adopted in the proposed UDO be applied to the entirety of the properties owned by and adjacent to legacy hotel properties, even if these other lands are currently separate legal tracts. In our case, the land on which the Surf Side Hotel is located is flanked by parcels held by the same group of owners – one that has been improved with a 6-unit condominium building, including an indoor pool, and the other that is unimproved.

Both parcels flanking the hotel originally were acquired with the intent to expand or augment the main hotel operations. Zoning codes made it inadvisable or unattractive to legally combine these properties. However, if the proposed UDO amendments clearly contemplated the application of the dimensional requirements to the totality of any lands adjacent to and presently owned by legacy hotel operators, we would likely pursue the steps necessary to create one lot comprised of all three land tracts in order to create the best holistic project and experience for our guests.

Finally, and regardless of the outcome of the consideration of these suggestions, I want to again thank you and the rest of the Town officials for your constructive approach to our conversations and your earnest and clear guidance as to how we might best proceed as we consider the potential application of the UDO changes to the Surf Side. Please note that our meeting with all of you was the kick-off and prelude to a three-day weekend meeting of our entire corporate team in Nags Head to study the existing hotel property and the overall market for tourism in Nags Head.

To a person, I can report that we are all excited by and hopeful for the reforms that the Town has in mind. We would like to think that in another forty years, a fourth or even fifth generation of the Simpler family will be proudly welcoming guests to the Outer Banks.

We appreciate your further consideration of these suggestions as you further deliberate the best course forward for the Town and the future of its legacy hotel properties.

Sincerely,



Alex Moore, President

cc: Ben Cahoon, Mayor, Town of Nags Head
Greg Sparks, Manager, Town of Nags Head
Andy Garman, Asst. Manager, Town of Nags Head
Kelly Wyatt, Deputy Director Planning & Development, Town of Nags Head
Cory Tate, Chief Building Inspector, Town of Nags Head
Ken Simpler, CEO Emeritus, Seaboard Hotels
Ken Simpler, Jr., Chairman, Seaboard Hotels
Marty Barnette, PLS, Barnette Integrated Land Planning