



# MEMORANDUM

## Town of Nags Head

### Planning & Development Department

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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 various Commercial Mixed-Use use types and the various used allowed therewith

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#### OVERVIEW AND BACKGROUND

At their February 17, 2021 meeting, the Board of Commissioners directed the initiation of a text amendment to include religious complex as an allowed use within shopping centers. The Board has scheduled a public hearing to consider this amendment at their meeting on April 7, 2021.

#### CODE CONSIDERATIONS

Section 7.32, General Provisions of the UDO, specifies those allowable uses to be included as part of all types of Commercial Mixed-Use use designations. The Commercial Mixed-Use uses include: Commercial with Accessory Residential, Group Development, Mixed Use Development, Multiple Principal Uses, and Shopping Center. Presently, Religious Complexes, defined as “a church (a building primarily used for public divine worship) or a church and any related structures including a parsonage, fellowship halls, educational buildings, youth centers, recreational facilities (which include playgrounds), day care centers, parochial schools or similar structures or areas located on a single site,” are not included as one of the allowable uses within a Commercial Mixed-Use use.

Additionally, Section 7.45 includes supplemental regulations applicable to Religious Complexes. The required dimensional requirements are more applicable to a standalone Religious Complex, as opposed to one that may be located within a tenant space of a shopping center.

#### POLICY CONSIDERATIONS

The Comprehensive Plan does not address this specifically. The Plan does refer to mixed-use in terms of mixing commercial and residential uses, but Staff does not believe this was intended to or contemplated the exclusion of institutional uses, such as Religious Complexes, from mixed-use development.

## 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:

- That Section 7.32, and specifically 7.32.5., be amended as follows:

### SECTION 7.32 GENERAL PROVISIONS.

The following provides the allowable uses for all Commercial Mixed-Use designations as permitted in accordance with Section 6.6, Table of Uses and Activities:

#### **7.32.1. Residential.**

- Cottage Courts.
- Dwelling, Single-Family.
- Dwelling, Two Family.
- Dwelling, Multi-Family.
- Home Occupations.

#### **7.32.2. Retail.**

- Art Gallery.
- Art Gallery – Owner Occupied.
- Beach Recreation Equipment Rental/Sales.
- Bicycle Shop (repair, retail, rental).
- Convenience Store.
- Food/Grocery Store.
- Furniture Store.
- 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).
- Hardware Store.
- Pet Shop/Dog Grooming.
- Pharmacy.

#### **7.32.3. Service.**

- Personal Service.
  - Group Fitness – Aerobics/Dance/Karate/Yoga.
  - Hair Salon.
  - Indoor Fitness/Gymnasium.
  - Massage Therapy Center.
  - Metaphysical Wellness Services.
  - Spa.

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- Food Service
  - Coffee Shop/Juice Bar.
  - Ice Cream Shop
  - Microbreweries
  - Restaurant, Neighborhood
  - Restaurant, Sit Down
  - Restaurant, Take Out

**7.32.4. Office.**

- Building Contractor’s Office
- Professional Office, including General Business, Financial, Real Estate Sales, Insurance, Attorney, Accountant, Mortgage

**7.32.5. Institutional.**

- Governmental Administrative Office.
- Libraries.
- Religious Complexes

**7.32.6. Medical.**

- Medical Offices.

**7.32.7. Accessory Uses.**

- Outdoor Stands – Accessory to Shopping Centers and Group Development.
- That Section 7.45, and specifically 7.45.1., be amended as follows:

**SECTION 7.45 RELIGIOUS COMPLEXES.**

Religious complexes are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided the following conditions are met:

**7.45.1. Dimensional Requirements.**

The following dimensional requirements shall not apply to religious complexes occupying a tenant space within a building with multiple tenant spaces.

TABLE 7-3: REQUIREMENTS FOR RELIGIOUS COMPLEXES				
	R-2	R-3	SPD-20	C-2
Building Separation	30 feet			
Setbacks	25 feet property line; 30 feet street or right-of-way			
Ratio of Floor Area to Site Area	1:6	1:4	1:6	1:4

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<b>Lot Coverage</b>	30%; may increase to 45% with stormwater management facilities designed to retain and infiltrate the two-inch storm event	55%
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**7.45.2. Accessory Uses in the SPD-20 District.**

A child care center or pre-school educational facility is allowed as an accessory use to a religious complex in the SPD-20 district, subject to the following conditions:

**7.45.2.1.** The facility adheres to the minimum requirements of and is licensed by the NC Department of Health & Human Services, Division of Child Development and Early Education.

**7.45.2.2.** Pickup and drop off areas shall be provided separate from the drive-aisle. The pickup and drop off areas shall be designed so that no child is required to cross the parking lot or any other traffic areas.

**7.45.2.3.** All outdoor recreational areas shall be buffered from adjacent residential uses and districts (R-1, R-2, R-3, CR, SED-80, SPD-20, and SPC-C) utilizing a 10-foot wide Commercial Transitional Protective Yard as prescribed in Section 10.93, Landscaping, Buffering, and Vegetation Preservation. The buffer shall be placed on the exterior side of any required fencing.

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:**

**None**