



MEMORANDUM

Town of Nags Head

Planning & Development Department

To: Board of Commissioners

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

Date: March 30, 2021

Subject: Public Hearing to consider text amendments to the UDO pertaining to nonconforming hotels and accessory uses in association with preexisting fishing piers; and text amendments pertaining to the permitted zoning district location and supplemental regulations for hotels (Attachment F-2)

OVERVIEW AND BACKGROUND

Two related text amendments are before the Board for consideration. The first proposal would establish a provision allowing for preexisting nonconforming hotels in the CR zoning district to seek a Conditional Use Permit to modify the use and/or structure, including enlarging or altering the use and/or structure, in a manner that would otherwise be precluded by the provisions pertaining to nonconforming uses; the proposal would also establish that dwelling units existing as of July 1, 2020 were an allowed accessory use to fishing piers. The second proposal would amend the UDO to allow hotels in the CR zoning district, subject to a Conditional Use Permit.

With respect to the first proposal to address preexisting nonconforming hotels and accessory uses as part of fishing piers, the Planning Board has taken several votes recommending approval, with the most recent being at their meeting on February 16, 2021. With respect to the amendment to allow hotels in the CR zoning district, the Planning Board voted 7-0 to recommend approval of the amendment, subject to a limitation that only hotels and sites used as hotels prior to January 1, 2021 would be considered to be a permitted use.

Please find attached a letter from Alex Moore, President, Seaboard Hotels, dated March 2, 2021, concerning the proposed text amendments.

CODE CONSIDERATIONS

At present, with the adoption of the UDO, hotels are no longer allowed as a permitted use, subject to a Conditional Use Permit, within the CR zoning district (Section 6.6). Based upon this, the following hotels are considered nonconforming uses:

1. Comfort Inn South, 8031 S. Old Oregon Inlet Road, constructed in 1974;
2. Dolphin Motel, 8017 S. Old Oregon Inlet Road, constructed in 1960;
3. Owens Motel, 7115 S. Virginia Dare Trail, constructed in 1966;
4. Seafoam Hotel, 7111 S. Virginia Dare Trail, constructed in 1961;
5. Islander Motel, 7011 S. Virginia Dare Trail, constructed in 1973;
6. Blue Heron Motel, 6811 S. Virginia Dare Trail, constructed in 1975;

7. Surf Side Hotel, 6701 S. Virginia Dare Trail, constructed in 1984;
8. Holiday Inn Express (former Nags Head Inn), 4701 S. Virginia Dare Trail, constructed in 1987; and
9. Colonial Inn, 3329 S. Virginia Dare Trail, constructed in 1947

Additionally, Section 7.50.1. pertaining to fishing piers, indicates that such piers may include accessory restaurant or retail uses, but does not include dwelling units. Both the Outer Banks and Nags Head fishing piers have on-site dwelling units, therefore resulting in nonconforming uses conditions,

Given the circumstances associated with these uses, both are subject to the following UDO provisions:

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. 160A-426, 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 nonloadbearing 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. 160A-426, 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.

With respect to both text amendment proposals, it was 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.*
- 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.*

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- 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.*
- 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 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.*

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).”

More specific and expanded policy considerations have previously been presented to the Board in their consideration of the text amendment to allow a Conditional Use Permit to be sought for a preexisting nonconforming hotel.

PLANNING BOARD RECOMMENDATION

With respect to the first proposal to address preexisting nonconforming hotels and accessory uses as part of fishing piers, the Planning Board has taken several votes recommending approval, with the most recent being at their meeting on February 16, 2021. With respect to the amendment to allow hotels in the CR zoning district, the Planning Board voted 7-0 to recommend approval of the amendment, subject to a limitation that only hotels and sites used as hotels prior to January 1, 2021 would be considered to be a permitted use.

STAFF RECOMMENDATION

Planning Staff believes both amendments have merit and achieve similar or the same outcomes, and therefore recommends adoption of either of the amendments as proposed. For consideration, Staff has included a provision in the ordinance for the text amendment to allow hotels in the CR zoning district consistent with the Planning Board’s recommendation that the use allowance be limited to hotels in existence as of January 1, 2021.

With regard to the Board of Commissioners’ 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 mater being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.*

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;
2. An Ordinance Amending the Code of Ordinances of the Town of Nags Head, North Carolina Pertaining to Nonconforming Hotels and Accessory Uses to Preexisting Fishing Piers, March 30, 2021 Draft; and
3. An Ordinance Amending the Code of Ordinances of the Town of Nags Head, North Carolina to Allow Hotels in the CR Zoning District Subject to Supplemental Regulations, March 30, 2021 Draft