



MEMORANDUM

Town of Nags Head

Planning & Development Department

To: Board of Commissioners

From: Michael Zehner, Director of Planning & Development
Holly White, Principal Planner

Date: March 30, 2021

Subject: Public Hearing to consider text amendments to the Unified Development Ordinance pertaining to outdoor lighting and lighting for signage (Attachment F-3)

OVERVIEW AND BACKGROUND

At their February 3, 2021 meeting, following Staff's presentation on a review of the Town's outdoor lighting regulations and best practices, the Board of Commissioners directed Staff to prepare amendments addressing deficiencies in current regulations with respect to adequate limits on commercial site and signage lighting.

Staff presented amendments pertaining to the lighting of wall signs, the lighting of roof signs, specifications associated with the external illumination of signs, and technical limits on LED lights and parking lot lights to the Planning Board at their February 16, 2021 meeting. Following a discussion, the Planning Board voted 6-0 to recommend approval of the proposed text amendments as presented. The Board indicated an interest in exploring additional changes further.

CODE CONSIDERATIONS

In varying degrees, regulations related to outdoor lighting are included in the following articles of the Unified Development Ordinance:

- Article 4 - Development Review Process
- Article 5 - Nonconformities
- Article 7 - Supplemental Regulations
- Article 8 - District Development Standards
- Article 9 - The Village at Nags Head SPD-C Zoning Ordinance
- Article 10 - Performance Standards
- Appendix A - Definitions

Given the direction provided by the Board of Commissioners, amendments are focused on the following lighting regulations:

- The lighting of commercial wall signs (Sec. 10.24.2.1.) and roof signs (Sec. 10.24.2.4.) as contained in the Sign Ordinance, where internal illumination of signs is not currently limited by individual or overall sign area;

- Technical provisions specific to the use of LED lights as contained in Section 10.34 of the Outdoor Lighting ordinance, which does not currently regulate the Correlated Color Temperature of LED lamps;
- Limits on the intensity of light fixtures at their source for lights used in parking lots, as contained in Section 10.37.1. of the Outdoor Lighting Ordinance, which currently regulates footcandles measured at the ground, but not the intensity of light at the source;
- Specifications for the external illumination of signs, as contained in Section 10.37.6.2., which does not currently require external illuminated signs to be downlit only, or specify limits on the intensity of lights; and
- Definitions contained in Appendix A, which need to be updated for consistency with proposed amendments.

POLICY CONSIDERATIONS

The Comprehensive Plan contains numerous applicable policies related to the proposed amendments, generally addressing lighting within the Land Use Section (3.2) under Site Development Characteristics (Section 3.2.4.; page 3-26); some observations of note included in this Section are as follows:

- The Town has held a longstanding commitment of being a dark sky community;
- The Land Use Section describes the desired characteristics of preferable development in Nags Head for the future; this section of the Plan not only addresses the physical characteristics of buildings, but the broader context of community character. Included in this description (page 3-5), are the following references to lighting and signage:

“A visible and dark night sky maintained by lighting that is minimal and carefully designed. Signage that provides adequate communication but does not dominate the landscape.”

In addition, the following policies and actions provide support for the proposed amendments, as well as broader efforts:

LU-16 Preserve the dark night sky through implementation and enforcement of quality lighting fixtures and codes, dark sky education, and citizen support.

LU-16a: Evaluate and modernize the lighting ordinance to reflect best practices for being a dark sky community.

LU-16b: Research and consider applying to the IDA for the Dark Sky designation.

LU-16c: Explore the feasibility of minimum regulations for residential properties that limit nuisance lighting to adjacent properties or town rights-of-way associated with glare or light trespass.

LU-16d: Explore efficient low-level lighting along multi-use pathways and at crosswalks to promote safety while preserving the night sky. The town should resist proposals to provide overhead lighting along roadway corridors.

LU-17 Maintain current regulations which prohibit lighting of the ocean beach or estuarine waters to protect marine species and limit unnecessary intrusions into natural areas.

PLANNING BOARD RECOMMENDATION

At their February 16, 2021 meeting the Planning Board voted 6-0 to recommend approval of the proposed text amendments as presented. The Board indicated an interest in exploring additional changes further.

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 (these amendments are included in the attached draft adoption ordinance):

- That Section 10.24.2.1. be amended as follows:

10.24.2.1. Wall signs

10.24.2.1.1. Wall signs placed against the exterior front and side walls of a building shall be permitted, provided that they shall not extend more than twelve (12) inches beyond the building wall surface and shall not exceed twenty (20) percent of the exposed finished wall surface area including openings on the wall where it is placed.

10.24.2.1.2. Wall signs shall not be permitted on the rear wall of a building except for: (1) buildings located on property with frontage on both US 158 and either NC 12 or Wrightsville Avenue; and (2) for buildings containing multiple business uses where public entry to an individual business is limited solely to the rear of the building; (3) rear wall signs not visible from the street right-of-way and adjoining properties; and (4) rear wall signs, upon structures located adjacent to US 158, where not visible from any residential use or residentially zoned property.

10.24.2.1.3. Individual wall signs with an area of fifty (50) square feet or greater shall not be internally illuminated; such signs may be externally illuminated or reverse lit. Additionally, in the case of multiple wall signs associated with any singular business/tenant, no combined sign area fifty (50) square feet or greater shall be internally illuminated; such sign area may be externally illuminated or reverse lit.

- That Section 10.24.2.4. be amended as follows:

10.24.2.4. Roof signs

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10.24.2.4.1. Roof signs shall not exceed twenty-five (25) percent of the individual roof plane area to which they are attached. In no instance shall an individual roof sign exceed sixty (60) square feet in area. There shall be no more than two (2) roof signs per building.

10.24.2.4.2. Roof signs shall not be taller than ten (10) feet from the lowest point of attachment to the roof. In no instance shall roof signs exceed the maximum height limit for the zoning district in which the sign is permitted.

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10.24.2.4.3. Individual roof signs with an area of fifty (50) square feet or greater shall not be internally illuminated; such signs may be externally illuminated or reverse lit. Additionally, in the case of multiple roof signs associated with any singular business/tenant, no combined sign area fifty (50) square feet or greater shall be internally illuminated; such sign area may be externally illuminated or reverse lit.

~~Roof signs with external lighting shall be lit from the top down to avoid the glare and sky illumination characteristics of spot lighting or up lighting.~~

- That Section 10.34, General Provisions, be amended as follows:

SECTION 10.34 GENERAL PROVISIONS.

10.34.1. Light fixtures shall be located on the site and designed, shielded, or oriented in such a manner as to minimize light spill across property lines and prevent glare at any location on or off the property.

10.34.2. Except for fixtures which are permitted by this Article to be used for vertical illumination or for multi-purpose recreation fields, all light fixtures shall be cut-off fixtures as defined in Appendix A – Definitions.

10.34.3. All wiring to light fixtures not located on a building shall be placed underground.

10.34.4. Principal buildings shall provide security lighting.

10.34.5. Light fixtures and supporting structures shall be designed and constructed to comply with state building code requirements.

10.34.6. No light fixture, including signs, shall exceed thirty-five (35) feet in height, except as specified in subsections 10.34.7 or 10.37.5.6. Where existing nonconforming light fixtures exist, including signs, such light fixtures and sign may be replaced provided there is no increase in the degree of nonconformity.

10.34.7. All permitted structures that exceed one hundred (150) feet in height shall be lit in compliance with the FAA regulations as identified in FAA Obstruction Marking and Lighting Advisory Circular AC 70/7460-1K as amended August 8, 2000, or the most recent FAA Advisory Circular on Obstruction Marking and Lighting, and approved by the Board of Commissioners.

10.34.8. LED lamps and/or light fixtures used in installations subject to the requirements of this section shall not have a correlated color temperature in excess of 3,000K.

- That Section 10.37.1, Parking Lots, be amended as follows:

10.37.1. Parking Lots.

Illumination standards for parking lots are based on anticipated vehicular and pedestrian activity. The standards are designed to provide the minimum lighting necessary to ensure adequate vision and safety in parking areas while at the same time minimizing glare. **In no case shall the maximum initial lumens generated by any individual light fixture exceed 9500 initial lamp lumens.**

- That Section 10.37.6.2, be amended as follows:

10.37.6.2. ~~Spotlights or floodlights~~ **Lights** may be utilized to externally illuminate wall and freestanding signs, provided that the light fixtures are designed, located, aimed, and shielded so that light is directed only onto the sign area. **Externally illuminated signs shall be downlit only using full cutoff fixtures, with the light fixture mounted above the sign, and** ~~Light fixtures shall not be aimed toward adjacent streets, or properties. Floodlights designed to illuminate signs from the ground shall not be mounted at a height greater than thirty (30) inches, or located a horizontal distance greater than three-quarters the height of the sign or fifteen (15) feet, whichever is less.~~ **Light fixtures used for the external illumination of signs shall not have lamps which produce more than 75 watts and/or 1,100 lumens, and the** ~~The~~ average level of illumination shall not exceed ten (10) average maintained footcandles.

- That Appendix A, Definitions, be amended with the addition of the following definitions:

Correlated color temperature or CCT means the perceived color of the light emitted by a lamp, expressed in kelvin (K) units. The lower the kelvin rating, the "warmer" or more yellow the light; the higher the rating, the "cooler" or more blue the light.

Reverse Lit means a type of sign and/or sign illumination using an opaque face and sides, generally constructed of aluminum, and a clear polycarbonate back or no back. Light does not pass through the face of the sign, but rather comes out of the back of the sign and is cast off the wall behind the sign, thereby creating a silhouette of the outline of the sign face. Also known and referred to as "Reverse Back Lit", "Halo", or "Halo Lit" sign or sign illumination.

Sign, externally illuminated means a sign illuminated by an externally light source, directed solely toward such sign.

Sign, internally illuminated means a sign illuminated by an internal light source, utilizing translucent panels, canvas or other fabric, letters, devices or other similar components to create an image by allowing light to pass through. A "Reverse Lit" sign is not an internally illuminated sign.

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 matter 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. Adoption Ordinance, dated March 30, 2021