



# 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 Planning Director

Date: April 16, 2021

Subject: Consideration of a text amendment pertaining to lot coverage associated with dumpster conversions from side load to front load pick up

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#### OVERVIEW AND BACKGROUND

The Town is currently undergoing a process of converting existing side-load dumpsters to front-load dumpsters given the expectation that the availability of trucks that are able to service side-load dumpsters will be reduced in the future. To aid in this effort and to reduce complications involving alterations and/or expansions to dumpster locations or pad dimensions, Staff requested and the Board authorized development of a text amendment to the UDO to address potential increases in lot coverage that may be associated with these changes.

#### CODE CONSIDERATIONS

Allowable lot coverage, related to zoning district and use types is established within Section 8.2.1., Dimensional Requirements, of the UDO. Section 8.6.6., Lot Coverage, of the UDO establishes specific requirements for the administration of lot coverage, and Section 8.6.6.7., Exclusion of Lot Coverage Calculation, outlines those instances where lot coverage may otherwise be exempted or excluded. There is currently no exemption for dumpster pads.

#### POLICY CONSIDERATIONS

The Comprehensive Plan does not specifically address this matter.

#### STAFF RECOMMENDATION

To make the conversion process more flexible and proceed more efficiently, it is Staff's recommendation that the following amendments to the UDO be adopted:

- That a Section 8.6.6.7.6. be added to Section 8.6.6.7., Exclusion of Lot Coverage Calculations, as follows:

**8.6.6.7.6.** Where a preexisting use is required by the Town to convert the service orientation of a dumpster, or where a preexisting use is required by the Town to obtain a dumpster, any additional lot coverage required by the Town to be created for the location and servicing of such dumpster, not to exceed the amount required by the Town, shall be exempt from the lot coverage

requirements of this UDO.

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**