



MEMORANDUM

Town of Nags Head

Planning & Development Department

To: Planning Board

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

Date: July 19, 2021

Subject: Consideration of a text amendment to the Unified Development Ordinance pertaining to lot coverage associated with recycling dumpsters

OVERVIEW AND BACKGROUND

As the Planning Board may recall, the Board of Commissioners recently adopted the following amendment to the Unified Development Ordinance to address the siting of dumpsters, exempting associated lot coverage in certain instances:

8.6.6.7.6. For a preexisting use, when the service orientation of a dumpster is being converted, or when a dumpster is required to be obtained, consistent with the applicable requirements of the Town Code, any additional lot coverage in excess of the maximum allowable lot coverage and necessary to meet the Town's minimum requirements for a dumpster pad, as determined by the Public Works Director of his/her designee, shall be exempt from the lot coverage requirements of this UDO.

When discussing this amendment, the Board requested that Staff also pursue a similar exemption for lot coverage associated with dumpsters for recyclables. The circumstances associated with recycling dumpsters is slightly different than those associated with the former text amendment, as there is no requirement that recyclables be separated, and therefore no requirement that a dumpster be provided. However, Staff perceived that the intent of the majority of the Board was to remove potential barriers to recycling, where lot coverage limits may preclude a property owner from being able to locate a dumpster on a property.

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*, as follows, outlines those instances where lot coverage may otherwise be exempted or excluded.

8.6.6.7. Exclusion from Lot Coverage Calculation.

8.6.6.7.1. When access easements are provided in accordance with Section 10.47, Limiting Access to US 158, US 64/264, NC 12, and SR 1243, and Section 10.51, Requirements for and Contents

of Preliminary Plat and Supporting Documents, a maximum of twenty (20) feet for two-way and fourteen (14) feet for one-way improved access surface areas shall be excluded from individual lot coverage calculations. This exemption shall also apply to existing legal lots of record meeting the lot frontage requirements of Section 10.47 and further provided that the requirements of Section 10.51 are met and where such access has been approved by the planning and development director and recorded on a subdivision plat in accordance with this UDO. This exception shall be applicable only for single-family and two-family uses for access only and shall not be used for the parking of vehicles and shall be noted in the covenants and deed restrictions required by Section 10.51.

8.6.6.7.2. Portions of built-in railing benches constructed in accordance with Appendix B, Town of Nags Head Residential Design Guidelines extending beyond the building footprint shall be excluded from individual lot coverage calculations.

8.6.6.7.3. When an existing or proposed commercial parking lot is designed and or modified to allow two-way vehicular traffic and pedestrian flow between adjoining commercial properties in commercial zoning districts the following exclusions of lot coverage shall apply provided the lot coverage exclusions of this section shall not apply to lot coverage within cross-easements located within an estuarine AEC:

8.6.6.7.3.1. Up to two hundred twenty (220) square feet of the lot coverage within the shared vehicular travel area included within a recorded cross-easement may be excluded from the lot coverage calculation of each lot for the purpose of constructing the shared vehicular travel access.

8.6.6.7.3.2. Up to seventy-five (75) square feet of lot coverage for handicap accessible, pedestrian sidewalk area within a shared cross-easement may be excluded from the lot coverage calculation of each lot for the purpose of constructing the shared pedestrian sidewalk.

8.6.6.7.4. Up to a maximum of two hundred (200) square feet of lot coverage if one or more bicycle racks are located on improved surfaces in compliance with the requirements of subsections 10.15.1.2., 10.15.2.5., and/or 10.92.15.3.

8.6.6.7.5. Municipally owned walkways, boardwalks, multi-use paths and sidewalks are exempt from the lot coverage requirements of this UDO.

8.6.6.7.6. For a preexisting use, when the service orientation of a dumpster is being converted, or when a dumpster is required to be

obtained, consistent with the applicable requirements of the Town Code, any additional lot coverage in excess of the maximum allowable lot coverage and necessary to meet the Town's minimum requirements for a dumpster pad, as determined by the Public Works Director of his/her designee, shall be exempt from the lot coverage requirements of this UDO.

POLICY CONSIDERATIONS

The Municipal Services Element of the Comprehensive Plan addresses recycling, providing the following associated policy and actions:

- MS-13 Provide for the most effective and economical collection and disposal/recycling of commercial and residential solid waste that meets community expectations for cleanliness and appearance. The town should work to provide service to all generators of solid waste emphasizing reuse and recycling practices over disposal.
 - MS-13a: Explore expansion of the town's recycling program to add new types of waste items as recycling technology evolves and markets for recycled materials develop.
 - MS-13b: Research and plan for expansion of town-wide recycling service to commercial properties and/or those properties not serviced by the existing residential curbside service in order to meet the town's stated goal of 40 percent waste reduction by 2022 (from the Solid Waste Management Plan).
 - MS-13c: Monitor recycling tonnage from the town's residential program and employ methods such as education programs to improve recycling participation. This could include working with rental agencies, property owners associations, and directly with homeowners to provide marketing and educational materials on the town's program.
 - MS-13d: Explore programs and/or develop and enforce regulations that limit the timeframe residential carts sit adjacent to roadways.
 - MS-13e: Monitor community growth and demands for service and plan for recommended increases in manpower and equipment when necessary. Additional measures or benchmarks are needed to determine when demand exceeds the capacity of current resources to maintain service levels.
 - MS-13f: Consider technologies including RFID tags to improve collections data which will provide the town with information that it can use to refine service levels.
 - MS-13g: Actively engage staff in the update to the Solid Waste Management Plan and review its goals for recycling and waste reduction.

- MS-13h: Develop and conduct progressive educational programming aimed at reducing waste and promoting reuse and recycling

The Comprehensive Plan also includes policies and actions valuing existing lot coverage limits as a way to address development intensity or density, as well as stormwater management.

STAFF RECOMMENDATION

While the Comprehensive Plan includes policies valuing lot coverage limits, Staff is of the opinion that those are perhaps intended to address the development intensity or density of uses directly, rather than solid waste collection, and specifically recyclable collection aspects of a developed site. Regardless, it is important to note that while potentially exempted from lot coverage limits, such areas would still be subject to location limits, and may also be subject to stormwater regulations. And further, exempting such lot coverage would work to advance policies and actions related to solid waste, reuse, and recycling. Therefore, Staff is of the opinion that an associated amendment is consistent with the Town's adopted Comprehensive Plan and is reasonable and in the public interest, and recommends adoption and suggests at least two (2) ways to amend the UDO to accommodate an exemption from lot coverage for dumpsters used for recyclables; the first option involves amending the recently adopted provision for dumpsters (Section 8.6.6.7.6.) as follows:

8.6.6.7.6. For a preexisting use, when the service orientation of a dumpster is being converted, or when a dumpster is required to be obtained, consistent with the applicable requirements of the Town Code, any additional lot coverage in excess of the maximum allowable lot coverage and necessary to meet the Town's minimum requirements for a dumpster pad, as determined by the Public Works Director of his/her designee, shall be exempt from the lot coverage requirements of this UDO. This exemption shall also apply in the same manner to the siting of dumpsters for recyclables, where a dumpster for the collection of recyclables is proposed to be located on property.

Alternatively, a Section 8.6.6.7.7. could be added, as follows:

8.6.6.7.7. For the siting of a dumpster for the collection of recyclables, any additional lot coverage in excess of the maximum allowable lot coverage and necessary to meet the Town's minimum requirements for a dumpster pad, as determined by the Public Works Director of his/her designee, 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.

Pursuant to Section 3.5.4.2. of the UDO, 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. Prior to voting to adopt or reject the proposed text amendment, the Board should adopt a statement approving the amendment and describing the amendment's consistency with the Town's adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest, 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, or a statement approving the amendment and containing at least all of the following:

- 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.
- 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.
- Why the action was reasonable and in the public interest.

Attachments: *None*