



MEMORANDUM

Town of Nags Head

Planning & Development Department

To: Planning Board

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

Date: January 17, 2020

Subject: Discussion of various amendments to the Unified Development Ordinance.

Planning Staff received three text amendment requests for consideration at the Planning Board's January 21, 2020 meeting. The amendments for consideration are detailed below:

1. Consideration of a text amendment to the Unified Development Ordinance submitted by Ms. Kate Creef, Assistant General Manager on behalf of Outlets Nags Head, to allow outdoor kiosks in conjunction with or as an accessory use to Retail Shopping Centers located within the C-2, General Commercial Zoning District.
2. Consideration of a text amendment to the Unified Development Ordinance submitted by Ms. April Vaughn of Whalebone Surf Shop to allow outdoor stands for the sale of produce in conjunction with or as an accessory use to General Retail within the C-2, General Commercial Zoning District.
3. Consideration of a text amendment to the Unified Development Ordinance submitted by Ms. April Vaughn of Whalebone Surf Shop to allow beer and wine sales by the glass as a permissible use in conjunction with or as an accessory use to General Retail within the C-2, General Commercial Zoning District.

While the requests are separate, there are some similarities, and because of the informal nature of the submittals, Staff was of the opinion that a larger discussion amongst the Board was warranted, along with a less focused review by Staff in the form of separate memorandums. Staff believes a discussion by the Board at this meeting will provide feedback that will allow the applicant to refine the requests, perhaps with Staff's assistance as might be necessary.

KIOSKS AND OUTDOOR STANDS

Staff is of the opinion that the requested text amendments related to outdoor kiosks at Retail Shopping Centers and outdoor stands for the sale of produce at general retail locations are interconnected, and taking a holistic approach to discussing the two may be ideal. Currently, the Unified Development Ordinance allows Outdoor Stands as an accessory use to Retail Shopping Centers and Group Developments. An Outdoor Stand is defined as "an approved area where the sale of produce, hot dogs, coffee, ice cream or Italian ice and fudge occurs from a cart or structure; supplemental standards associated with this use, as listed in Section 7.76, and outlined below:

Outdoor stands, accessory to shopping centers and group development, are permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.76.1. The principal sale of items at an outdoor stand shall be limited to either fresh produce, hot dogs, coffee, ice cream or Italian ice and fudge. The sale of any other items shall be incidental and limited to no more than ten percent of the display area or ten percent of sales.

7.76.2. Only one outdoor stand shall be allowed per site. The stand shall not be required to be a permanent structure and may be located upon a trailer. When located upon a trailer, skirting shall be installed around the perimeter to screen the wheels, axles and towing hitch from view.

7.76.3. The stand area, inclusive of display counters and awnings, shall not exceed four hundred (400) square feet for produce stands and shall not exceed one hundred fifty (150) square feet for hot dog, coffee, ice cream and Italian ice and fudge stands. Refrigeration units may be utilized within the stand area. The location of the stand on the site shall comply with minimum district yard regulations for principal use structures.

7.76.4. Produce stands shall be temporary and may be operated for a period of time not to exceed 180 days annually. The dates of operation shall be limited to between May 1 and November 1 each year. Hot dog, coffee, ice cream and Italian ice and fudge stands may be operated year-round but shall not be left on the property overnight and must be removed daily.

7.76.5. All stands shall comply with applicable Dare County Health Department regulations and permitting requirements.

7.76.6. When located on a site with fifty (50) or more existing parking spaces, no additional parking spaces will be required. When located on a site with less than fifty (50) parking spaces a minimum of three (3) off-street parking spaces in accordance with parking regulations of this UDO shall be provided.

7.76.7. When the regulations contained in the subsection are in conflict with the general regulations of Town Code Section 12 Article III, Peddlers and Itinerant Merchants, the provisions of this UDO shall prevail.

As identified, the allowance for the types of items that are permitted to be sold at Outdoor Stands has been consciously considered through the text amendment process over the years. With the request for a "kiosk", while Staff finds the operation of one to be inherently similar to that of an outdoor stand, a kiosk was not an expressed permissible use, and the intended sale/booking of events, charters, and/or tours was not permitted at outdoor stands; therefore, staff felt that an amendment to the text of the UDO was necessary.

Similarly, and not unrelated, April Vaughn of Whalebone Surf Shop approached Staff to inquire about the ability to hold an outdoor market, with the predominate sale of produce, beneath the recently constructed covered patio area on the southern side of the retail structure located at 2214 S. Croatan Highway. Please keep in mind that text amendments are not site specific, but rather district wide; however, for the purpose of discussion, Staff wanted to provide a visual location associated with the request. As noted above, an "outdoor stand" for the sale of produce is allowed as an accessory use to Retail Shopping Centers, however, this particular location is not a Retail Shopping Center, but rather a stand-alone general retail business and the scope of the requested text amendment does not adhere to the supplemental standards as set forth in Section 7.76.1 noted above.

In the review and discussion, Staff suggests that the Board consider at least the following questions:

- Should there be a maximum area designated for an outdoor stand?
- Should outdoor stands continue to be considered an accessory use, or a principal use and parked independently?
- If a stand is truly an accessory use and for the convenience of the patrons of the principal use, does there need to be a minimum number of parking spaces onsite or the addition of three spaces?
- With more interest being shown in the use of food trucks, should the permissible items to be sold be broadened to include all or more types of food?
- Should the allowed sales at outdoor stands be amended to allow for booking and reservation of trips and events, making the addition of kiosks as a separate use type unnecessary, or should kiosks be added as a separate use type?
- Should amendments be expanded to address/allow outdoor sales that take place seasonally or periodically at many general retail establishments? Is the outside sale of produce significantly different than the outside sale of any retail goods?

BEER AND WINE CONSUMPTION WITH RETAIL USE

The second text amendment request submitted by Mrs. Vaughn is to amend the Unified Development Ordinance to add the sale of beer and wine by the glass for consumption as a permissible use in conjunction with or as an accessory use to General Retail uses within the C-2, General Commercial Zoning District. When Mrs. Vaughn originally approached the Planning Department with her questions, she explained that her vision would be to offer an area within the existing retail structure to allow patrons of the business the ability to purchase a glass of beer or wine to enhance the retail experience. Additionally, she envisions patrons of nearby establishments might also like to come into a seating area to purchase a glass of beer or wine. While Ms. Vaughn has stated that the ability to purchase beer and wine would only be during regular business hours of the principal retail use, if the ability to purchase beverages is available to outside customers, not just those patronizing the principal use, then the use should not be considered an accessory use.

General information to keep in mind from the North Carolina ABC Commission when considering this item:

- On-Premise Permit Malt Beverage Permit can be issued to **any retail business**. Allows for sale and consumption on premise. Also allows for off-premise sales as long as it in the manufacturer's original container.
- On-premise Unfortified Wine (16% or less ABV) Permit can be issued to restaurants, hotels, eating establishments, food businesses, **retail businesses**, private clubs, conventions centers, etc. Allows for sale for consumption on business premises. Allows for off premise sales as long as its in the manufacturer's original container.
- Fortified wine and mixed beverage permits cannot be issued to retail businesses.
- Any location that holds permits for on-premise alcohol consumption must have at least two bathrooms in working order for public use.

- On-premise holders must recycle all recyclable beverage containers emptied and/or used on premise.
- No advertising bearing an alcoholic beverage brand name may be displayed outside your business or in the window of your licensed premise. Words that are permissible include "Beer" "Cold Beer" "Draft Beer" "Wine".
- Servers who prepare, serve, sell or deliver alcoholic beverages must be at least 18 years old.
- Minors (16 and 17) can work at a permitted business as long as they do not serve, prepare, sell or deliver any kind of alcoholic beverage.
- If selling they must adhere to Off-Premise Permit Holder Regs.

In the review and discussion, Staff suggests that the Board consider at least the following questions:

- As long as appropriate licenses are obtained, should retail businesses be able to sell beer and wine by glass?
- Should this use be allowed by-right, or with a Conditional Use Permit?
- While the Town allows restaurants, the Town does not allow bars or nightclubs, or generally, establishments that sell alcohol for consumption without also selling food; is this type of use consistent with the Town's values?

NEXT STEPS

Staff will be available to participate in the discussion and answer any questions that arise. After receiving additional input and feedback from the Planning Board and the applicants, Staff will generate proposed text amendments for the Planning Board to review at their February 18, 2020 meeting.

App # 201901096

ZONING AMENDMENT APPLICATION
TOWN OF NAGS HEAD, NORTH CAROLINA

Applicant Kate Creef, Assistant General Manager, on behalf of Outlets Nags Head

Mailing address 7100 South Croatan Hwy Nags Head, NC 27959

Explanation of request

- Zoning Ordinance - Section(s) _____
Attach amendment in ordinance form.
- Zoning Map
Attach copy of current Zoning Map with affected property outlined in red.
Attach names and mailing addresses of the property owners of all parcels of land abutting the parcel in question.

Nature of request

Request to allow reservation kiosks for on-site and off-site recreational activities as permitted use within retail shopping centers.

Reason for request

To enhance property use and customer shopping experience.

Kate Creef, Assistant General Manager, on behalf of Outlets Nags Head
Applicant
12/10/19
Date

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ZONING AMENDMENT APPLICATION
TOWN OF NAGS HEAD, NORTH CAROLINA

Applicant Whalebone Surf Shop, Inc
Mailing address P.O. 1359, Nagshead

Explanation of request

- Zoning Ordinance - Section(s) _____
Attach amendment in ordinance form.
- Zoning Map
Attach copy of current Zoning Map with affected property outlined in red.
Attach names and mailing addresses of the property owners of all parcels of land abutting the parcel in question.

Nature of request

To install a fenced in area
under our existing Pani to
accommodate a small garden center
accentuated with surfboards and floral
creating a visual as most Hawaiian
branded retail has incorporated.
veggies / floral and surfboards designed
with loose floral theme
sea oats, golden rod, Pennywort etc.

Reason for request

To "fix" create not only
usage for our awesome Pani area,
but to produce extra income to help
with additional enhancement.
With the competitiveness of online retail
adding a Smoothie Veggie for a local
super would increase our internal
business product. and sales tax for Dore Co.

Applicant [Signature]
Date 12/10/19



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Nature of request

To upgrade the interior of Whalebone to create a more appealing shopping experience by adding to:

- ① 14x14 lounge area created like a library with historical surf magazines books with small bar to accommodate coffee, Beer, wine giving the shoppers a more fun Outer Banks experience infused by 45 years of Whalebone history.

Reason for request

To increase not only a viable shopping experience but to increase sales and income.

Obviously everyone is aware that online sales especially in the retail realm are being burdensome.

The increase would definitely help with local sales tax increase, as well for the entire town

Applicant John
Date 12/10/19

Date