



Agenda Item Summary Sheet

Item No: **G-1**
Meeting Date: **May 7, 2014**

Item Title: Public Hearing and consideration of a zoning ordinance text amendment regarding Outdoor Stands permitted at Office Retail Group Developments.

Item Summary: This zoning ordinance text amendment, submitted by South Beach Plaza Associates, LLC would amend Town Code Section 48-407(b)(10), Outdoor Stands, to allow Outdoor Stands as an accessory use to "Office Retail Group Development" within the C-2, General Commercial Zoning District.

Staff Recommendation: Staff recommends adoption of the zoning ordinance text amendment as presented.

Planning Board Recommendation: At their March 18, 2014 meeting the Planning Board voted unanimously to recommend adoption of the proposed zoning ordinance text amendment as presented.

Number of Attachments: 2

Specific Action Requested:

Request to open/close Public Hearing to consider Zoning Ordinance Text Amendment request.

Submitted By: Planning and Development Date: April 30, 2014

Finance Officer Comment:

Insufficient information to determine precise fiscal impact.

Signature: Kim Kenny Date: April 30, 2014

Town Attorney Comment:

If adopted as presented, the proposed ordinance amendment will meet the goals it is trying to accomplish.

Signature: Ben Gallop Date: April 30, 2014

Town Manager Comment:

I concur with staff.

Signature: Cliff Ogburn Date: April 30, 2014

STAFF REPORT

TO: Board of Commissioners
FROM: Kelly Wyatt, Deputy Planning Director/Zoning Administrator
Elizabeth Teague, Planning & Development Director
DATE: May 7, 2014
SUBJECT: Public Hearing to consider a proposed zoning ordinance text amendment to Town Code Section 48-407(b)(10), Outdoor Stands within the C-2, General Commercial Zoning District.

SUBJECT OR MOTION(S):

1. Motion to recommend adoption of a Zoning Ordinance Text Amendment to Town Code Section 48-407, Outdoor Stands within the C-2, General Commercial Zoning District, Produce Stands.

BACKGROUND:

Mr. Greg Nigro of South Beach Plaza Associates, LLC has submitted the attached zoning ordinance text amendment application. If adopted, this text amendment would permit the operation of outdoor stands as an accessory use to Office/Retail Group Development. Office Retail is defined in Town Code Section 48-7, Definitions:

Office/retail group development means a group of buildings on a single site which are occupied and used for professional offices, retail, services, indoor recreation facilities, and/or restaurant uses.

The current ordinance, which has evolved over time, allows specified low impact food vending uses as an accessory use to Retail Shopping Centers only. Allowable outdoor stands include: fresh produce stands, hot dog stands, coffee stands, Italian ice and fudge stands and most recently approved by the Board of Commissioners, ice cream stands.

The applicant is interested in providing a produce stand at the South Beach Plaza site where Dunkin Donuts, Taco Viva, Sweet Frogs, and Laser Tag are located. The property was developed under the regulations of "Office Retail Group Development" and not as a "retail shopping center." Therefore, the current ordinance would not allow a produce stand at this location as the ordinance is specific in allowing vending stands only in Retail Shopping Centers.

This ordinance would expand the location for which allowance for carts and stands for outdoor fresh produce, hot dog, coffee and Italian ice and fudge and Ice Cream vending as approved in 2009 and 2010. Town Code Section 48-372, Outdoor Stands, sets forth the provisions that specifically govern the items for sale, number of stands allowed, size, site location, days of

operation, and parking standards for the proposed accessory use. Section 48-284 specifies the permitted signage for this accessory use.

However, the applicant is only seeking this amendment for the C-2, General Commercial District, not the Village at Nags Head Commercial 1 and 2 District. There is currently only one "Office Retail Group Development," in the C-2 District and that is the South Beach Plaza, and adoption of this ordinance would have limited impact as it would allow this additional use at this location only.

Regulations for the stand are not otherwise proposed to be altered, and would remain:

- 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.
- 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.
- The stand area, inclusive of display counters and awnings, shall not exceed 400 square feet for produce stands and shall not exceed 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.
- 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.
- All stands shall comply with applicable Dare County Health Department regulations and permitting requirements.
- When located on a site with 50 or more existing parking spaces, no additional parking spaces will be required. When located on a site with less than 50 parking spaces a minimum of three off-street parking spaces in accordance with parking regulations of this chapter shall be provided.
- When the regulations contained in the subsection are in conflict with the general regulations of chapter 12, article III, peddlers and itinerant merchants, the provisions of this chapter (chapter 48, zoning) shall prevail.

Signage and parking requirements would also remain unchanged and would not be revised or altered by the text amendment request. Therefore, the same regulations would apply to stands within an Office Retail Group Development as they currently do for Retail Shopping Centers.

Any proposed signage for the stand would be limited to 15 square feet in size attached to the stand. Parking would be accommodated by existing parking provided that there were at least fifty (50) improved parking spaces on-site. If less than fifty (50) parking spaces are on-site the stand would be required to provide 3 parking spaces. This is the same parking standard that would be required of a retail shop (1 space for every 200 sq. ft.) of similar size plus parking for one (1) employee.

In 2013 the Planning Board and Board of Commissioners heard a request to increase the number of allowable stands operating at any time to two (2). That request was denied so only one (1) stand can be operational at a site at any given time.

Planning Staff Recommendation

"Outdoor Stand," is a relatively new use allowance within the Town that has had much discussion and a recent request to allow an additional vending stand at a Shopping Center, generated concerns relative to competition with local businesses and not wanting the appearance of itinerant merchants. However, the operation of the existing stands in Town have presented no conflicts or concerns specific to their operation and the produce stand which operated for several years at the Outer Banks Mall proved a popular source of fresh, locally produced vegetables. This stand can no longer operate at this location and would like to continue their business in the Nags Head community.

Extending the allowable location of such stands to "Office Retail Group Development" sites within the C-2, General Commercial District would offer a business opportunity at a new location. As always, the consent of the property owner would be required before any permit would be issued for operation of any stand, and the stand and property owner would have to comply with the requirements of the ordinances.

Staff finds no inconsistencies between the proposed ordinance and the 2010 Land Use Plan. Staff furthermore finds that the allowance of an outdoor stand at an Office Retail Group Development is consistent with the statement of intent of the commercial zoning district in which permitting is being requested and is compatible with the uses currently permitted in those districts. Staff would recommend adoption of this text amendment due to the benefits it would afford to the patrons of the Office Retail Group Development but to the community in general.

*Should the Planning Board wish to consider a more restrictive version of this request you may want to consider allowing only produce stands as an accessory use to Office Retail Group Development. Produce stands are temporary uses which may be operated for a period of time not to exceed 180 days annually and the dates of operation are limited between May 1 and November 1. While text amendments are not site specific, South Plaza is currently the only "Office Retail Group Development" within the Town to date. This location already has food, dessert and coffee ventures so limiting the allowable stands to produce only may be a viable discussion.

Planning Board Recommendation

At their March 18, 2014 meeting the Planning Board voted unanimously to recommend adoption

of the zoning ordinance text amendment as presented. They did not wish to limit the allowable stands to produce only as mentioned in the staff recommendation due to the fact that tenants change and South Beach Plaza, or any future Office Retail Group Development, may not always have food, dessert and coffee ventures onsite.

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES
OF THE TOWN OF NAGS HEAD, NORTH CAROLINA**

WHEREAS, The Town desires to build an economy based on family tourism; and

WHEREAS, The Town works to support local business owners; and

WHEREAS, the Town finds that these text amendments are consistent with the goals, objectives and policies of the Town's adopted Land Use Plan, and that this action is reasonable and in the public interest;

NOW THEREFORE BE IT ORDAINED by the Board of Commissioners of the Town of Nags Head, North Carolina, that Chapter 48, Zoning, of the Code of Ordinances shall be amended as follows:

PART I. That **Section 48-407, C-2 General Commercial District**, be amended as follows:

Section 48-407(b)(10), Outdoor Stands as an Accessory Use within the C-2, General Commercial Zoning District.

(10) Outdoor stands as an accessory use to retail shopping centers and office retail group development pursuant to section 48-372

PART II. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. This ordinance shall be in full force and effect from and after the ____ day of ____ 2014.

Robert C. Edwards, Mayor
Town of Nags Head

ATTEST:

Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:

Town Attorney

Date adopted: _____

Motion to adopt by Commissioner _____

Motion seconded by Commissioner _____

Vote: _____ AYES _____ NAYS