

STAFF REPORT FOR TA20-01 TEXT AMENDMENT APPLICATION

APPLICATION SUMMARY	
Case Number: TA20-01	
Request:	
To amend Articles 1, 2, 3, 4, 5, and 10 of the Unified Development Ordinance to simplify the method of measuring the height of structures; increase height maximums for buildings in the RMF-MH, RMF-H, O&I, and I-1 districts; revise the Planned Development district; clarify lighting standards; establish new design standards for self-storage facilities in high-visibility areas; update telecommunication facility standards; correct minor errors made when reorganizing code documents; and clarify existing permissions.	
Applicant:	Subject Ordinances:
New Hanover County	Unified Development Ordinance
Purpose & Intent	
<p>This amendment is one of the final ordinance changes associated with the Unified Development Ordinance code update project and consists of a variety of amendments intended to clarify existing policies and modernize outdated code provisions, including:</p> <ol style="list-style-type: none"> 1. Administrative Corrections and Clarifications to Existing Standards <ol style="list-style-type: none"> a. Clarification of existing lighting standards intended to limit light spillover onto adjacent properties b. Clarification of current code provisions for when attached housing types are allowed and when recreational vehicles can be used as dwellings c. Corrections to minor errors made in adapting new districts and transferring provisions from the Zoning Ordinance into the Unified Development Ordinance format 2. Modifications for Legal Compliance <ol style="list-style-type: none"> a. Updates to ensure telecommunication facility standards are consistent with current state law b. Revisions to the definition of the term “boat” and standards for storage of small watercraft resulting from a decision on a county Board of Adjustment appeals case 3. Changes to Modernize and Update Provisions <ol style="list-style-type: none"> a. A simplification of the method for measuring the height of structures b. Incremental increases to height maximums for structures in the RMF-MH, RMF-H, O&I, and I-2 districts to accommodate changes in construction standards and market demand c. Revisions to the Planned Development (PD) district intended to support more innovative projects that can be appropriate in both suburban and rural areas of the county d. New design standards for self-storage facilities in high-visibility areas 	

BACKGROUND

In February 2020, the New Hanover County Unified Development Ordinance (UDO) was adopted, consolidating five existing development codes into one unified format. Since that time, Planning staff has worked with the project's consulting team, Clarion, to identify and prepare the amendments needed to close out the project.

This request consists of a variety of amendments intended to clarify existing policies and modernize outdated code provisions. The primary future amendment that will bring this project to a close is the revised tree retention standards, as directed by the Board of Commissioners, though additional amendments are being drafted for consideration, such as neighborhood compatibility standards and updates to buffering requirements and setbacks.

1. ADMINISTRATIVE CORRECTIONS & CLARIFICATIONS OF EXISTING STANDARDS

a. Site Lighting Clarification

The Unified Development Ordinance currently has provisions in place that require site lighting associated with commercial, mixed use, and multi-family development to only illuminate the development and not shine on or spill over onto adjacent residential properties. However, the language is unclear and has resulted in enforcement issues and differing interpretations of whether the standard has been met. This amendment clarifies these standards by outlining specific limits on the amount of lighting allowed to spill over onto abutting residential and commercial properties and when these provisions apply. It is not intended to change existing regulations but to replace vague language with specific standards to assist with site design and review. Site designers and lighting designers with Duke Energy have reviewed the provisions to confirm standards are reasonable and do not create practical difficulties.

b. Housekeeping Items to Clarify Provisions

As mentioned during the consideration of the reorganized Unified Development Ordinance document, staff anticipated that some clarifications and "housekeeping" items would be included in future text amendments to ensure that current provisions were clear and to correct any transfer errors that may have occurred during the reorganization of code language into the over 400-page UDO document. This proposed amendment addresses each of these items, continuing the work to reorganize the county codes into one unified format.

One of the primary goals of the reorganization of existing codes into a Unified Development Ordinance document was to clearly articulate how provisions have historically been interpreted to make sure all users of the document had a common understanding of what is allowed and not allowed. As staff has used the reorganized document to review development requests and answer property owners' questions over the past five months, we have found that some provisions are not as clear as we had hoped they would be.

To address these provisions, this amendment includes provisions specifying that:

1. Attached housing styles are only allowed as part of a performance residential development in the R-20, R-15, R-10, and R-7 zoning districts. Because some Zoning Ordinance users were not aware that townhomes and multi-family dwellings were possible in these districts based on historic interpretations of code provisions, each housing type is now listed separately in the Unified Development Ordinance's Principal Use Table. This amendment adds additional language to their use-specific standards to further clarify that they are only

permitted as part of a performance development, which applies density maximums, and cannot be built on a single lot.

2. Use of recreational vehicles or travel trailers as dwellings is only allowed in a Campground/Recreational Vehicle Park. This provision is currently located in the use-specific standards for Campground/Recreational Vehicle Park uses, and the proposed amendment adds the provision in the Accessory Use standards where it is more visible for ordinance users and clarifies that it does not prohibit parking of RVs or their use as Temporary Relocation Housing after a declared State of Emergency (such as Hurricane Florence).
3. A row of more than four townhomes (row-style dwellings) is not allowed in the R-5 district. This district was limited to no more than four dwelling units in a structure when it was initially adopted, which was no longer clear once quadraplex and row-style dwelling types were separated during the reorganization.

c. Housekeeping Items to Correct Minor Transfer Errors

As mentioned above, staff anticipated that it was possible that unintentional errors might be made when transferring provisions into the Unified Development Ordinance format. Since February, staff has found during regular use of this document that some existing requirements were inadvertently not included in the transfer of zoning provisions.

As a result, this amendment includes the following provisions:

1. Special use permits for single-family dwellings, including mobile homes, do not require Planning Board review prior to the Board of Commissioners hearing and decision. This provision, which currently only applies to mobile homes in the RA, I-1, and I-2 districts, was originally adopted in 1990 to reduce the administrative burden for applicants for this small-scale, relatively non-complex use. While the sentence providing this process exception is outlined on application documents for special use permits, it is not currently articulated in the Unified Development Ordinance.
2. Freestanding sign standards for the Community Business (CB) district are the same as for the Neighborhood Business (B-1) district, while the standards for the Commercial Services (CS) district are the same as for the Regional Business (B-2), Light Industrial (I-1), Heavy Industrial (I-2), Airport Commerce (AC), and Shopping Center (SC) districts. These provisions were not included when the new districts were initially adopted.
3. Landscaping standards included in the Zoning Ordinance that were inadvertently not included in the reorganized document were added back.

2. MODIFICATIONS FOR LEGAL COMPLIANCE

a. Update of Telecommunication Facility Standards

The use-specific standards for telecommunication facilities, including antennas and wireless towers, has not been updated for several years and was no longer consistent with some provisions of state law (Session Law 2013-185). This amendment revises terms, definitions, and standards to ensure that our code language is aligned with those legal requirements. While some provisions, such as the terms and their definitions have no effect on current requirements, there are some changes. The state law currently sets the threshold for substantial modifications at a 10% alteration, while our ordinance currently allows a 15% alteration. This has been modified in the proposed amendment

to be consistent with the state requirements, which we already must follow. In addition, the amended standards require a special use permit to approve a major modification to a nonconforming tower (requiring Board of Commissioner approval) rather than a variance (Board of Adjustment approval) to be consistent with other approval provisions.

b. Revisions to Boat and Small Water Craft Storage Provisions

An early draft of the Unified Development Ordinance document included a definition of the term “boat” that removed references to small watercraft, such as kayaks and canoes. A legal ruling in a development appeals case made early in the UDO project process modified the way boat-related uses are interpreted in our ordinance. After an appeal of a Board of Adjustment case made by a group of residents living along Bald Eagle Lane regarding two community boating facilities’ ability to install kayak racks, a Superior Court judge ruled in 2017 that because the definition of “boat” in the county code included watercraft of any size, stacked storage racks for kayaks, canoes, or similar watercraft were equivalent to dry stack boat storage facilities, a use only allowed in commercial and industrial districts. As a result, multiple properties, including the Pages Creek Park Preserve, that have been developed over the past several years have not been allowed to install kayak racks that provide for the stacking of 2-3 layers of watercraft. These types of small watercraft storage are also not technically legal to have in a residential back yard, though storage designs that allow for unstacked storage (i.e. stored vertically or lying flat), such as those shown in Figure 2 below, are possible in any location.



Figure 1: Typical Dry Dock Boat Storage vs. Typical Small Watercraft Storage

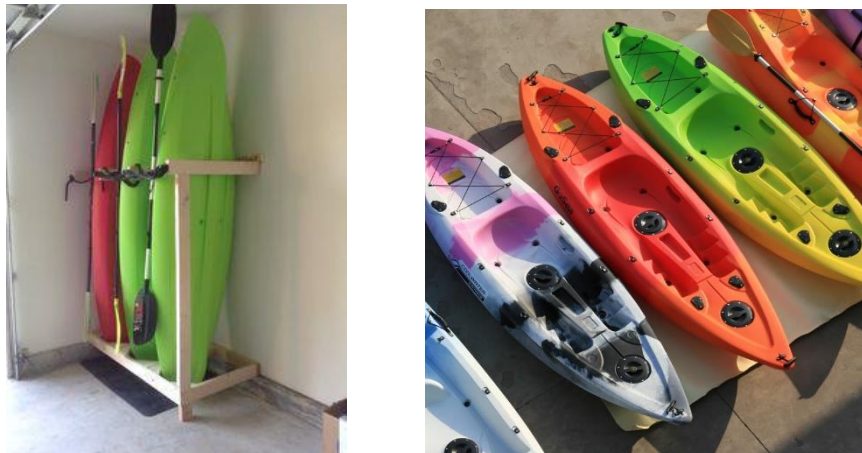


Figure 2: Types of Permitted Unstacked Small Watercraft Storage (not covered by court order)

Removing small watercraft from the definition of “boat” to correct the unintended consequences of the definition, however, would have allowed kayak racks and other accessory watercraft storage on the community boating facility properties that were the focus of the appeals case with solely staff review. Based on concerns regarding safety during storm events and the number of vehicles such structures could generate voiced by a representative of the group of Bald Eagle Lane residents at the December 5, 2019 Planning Board meeting, the Planning Board requested that staff work with interested stakeholders to develop a clear definition for “boat” and standards for personal watercraft storage that would mitigate those impacts.

The proposed amendment includes two components:

- New definitions for “boat” and “small watercraft” that differentiate them based on size, launching method, etc. and
- Clear accessory use standards for small watercraft storage structures associated with community boating facilities and outdoor recreation uses, the uses most likely to be associated with larger number of kayaks and users. These standards cover the concerns regarding building code compliance, safety, and parking voiced by the Bald Eagle Lane representative at the December 2019 Planning Board meeting by requiring that:
 - Storage structures be reviewed for compliance with the N. C. Building Code to determine anchoring requirements (required because community boating facilities and outdoor recreation facilities are considered commercial uses)
 - Watercraft would have to be removed if hurricanes were imminent, and
 - Additional parking (one automobile space for every four watercraft) would be required for outdoor recreation establishments and for community boating facilities not adjacent to the residential properties they serve.

It also addresses potential site-specific impacts that could be associated with small watercraft storage in conjunction with community boating facilities, like the two along Bald Eagle Lane, that were established prior to the current requirement of a special use permit. It specifies that adding accessory small watercraft storage to a nonconforming use is not something staff can approve administratively and would only be allowed with a special use permit.

The county currently has about 5 community boating facilities that were established prior to 1992 when special use permits were first required by the county. Because some of these facilities may have provided for small watercraft storage historically, the addition of such structures is not necessarily an extension of a nonconforming use (one that was in existence prior to our current ordinance), but that determination would need to be made, along with considerations regarding potential impacts, based on the scope of each request and the specific circumstances of the property. The special use permit process provides a clear way for that determination and consideration to be made by the Board of Commissioners. This requirement, however, was designed so that owners of existing legal nonconforming community boating facilities or outdoor recreation establishments will not lose existing permissions as the result of requesting small watercraft storage.

3. CHANGES TO MODERNIZE & UPDATE PROVISIONS

Building Height Modifications

The first amendment includes a simplification of the way the height of structures is measured and incremental increases to the maximum height allowed for structures in the RMF-MH, RMF-H, O&I, and I-1 districts.

a. Simplification of Height Measurement

The current method of measuring the height of structures has proven over time to be difficult to interpret and administer, and the intent of this amendment is to clarify provisions so they are easier to apply but still consistent with the North Carolina Building Code.

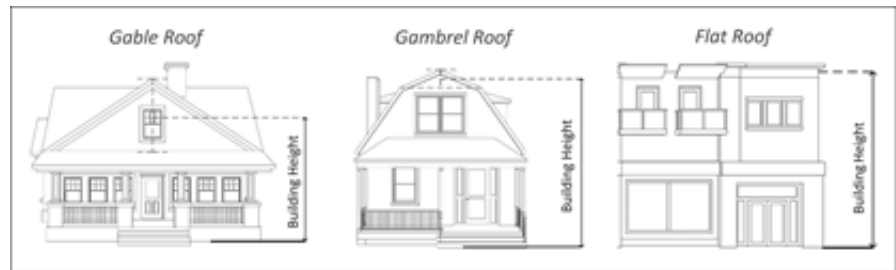


Figure 3: Proposed Graphic Illustrating Measurement

The proposed measurement would no longer require calculation of the “main” roof as based on the building’s design and includes provisions for flat and gambrel roof types.

b. Incremental Increase to Building Heights in Selected Districts

Provisions to increase the maximum height of structures in four zoning districts (RMF-MH, RMF-H, O&I, and I-1):

RMF-MH and RMF-H are the two higher density multi-family districts incorporated into the county’s ordinances last summer. Height in these districts is currently limited to 3 stories, with a maximum of 45 feet. The RMF-MH district allows up to 25 dwelling units per acre, and the RMF-H district allows up to 36 dwelling units per acre. These levels of density make a need for four-story buildings more likely, and increasing the maximum height allowed in these districts would allow for a building type—multi-family structures with an elevator—that could increase the housing access for older residents or those who have difficulty climbing stairs. Neither of these districts is currently applied to any properties within the unincorporated county, so the Planning Board and Board of Commissioners would be able to fully consider the height of individual projects under these standards if a rezoning were requested.

This amendment also includes raising the maximum height for non-residential structures in the O&I district to 52 feet to allow for mixed use buildings and office buildings, given changes to the North Carolina Building Code that require more equipment space between stories and market preference for higher first-floor ceilings. The height in the I-1 district, where office buildings are also likely, is raised to a 45-foot maximum. The intent is to allow developments to build the same number of stories (generally four) that were possible when the height limits were originally established but that are now difficult to achieve under current building standards. While these height increases will apply to existing properties with these zoning designations, current setback and buffering provisions, which are based on building height, limit potential impacts to adjacent residential properties.

c. Planned Development (PD) District Revisions

The intent of this amendment is to increase the flexibility of the Planned Development district provisions to encourage innovative projects that are appropriate throughout the different communities in the unincorporated county.

Current provisions include standards for setbacks that actually provide less flexibility than allowed in other districts through the performance residential option. Also, the base PD density (4.25 units per acre) is currently set lower than the Comprehensive Plan outlines for several place types. Additional density is currently allowed based on a point system originally adopted in 1984 intended to incentivize quality development and community benefits through density bonuses. That point system, though, is one-size-fits-all with the same development features, such as docks and bus shelters, shown as desirable regardless of the project location or needs of the surrounding community. In addition, they are not consistently aligned with the development priorities outlined in the current 2016 Comprehensive Plan.

Rather than using a density bonus point system, which is a dated model and a strategy most often effective when the places where it is applied have consistent needs and their costs and benefits are easier to calculate, our consulting firm has recommended a more flexible planned development strategy as best practice. This method sets up general parameters for density and dimensional requirements but allows the Master Development Plan proposed as part of the initial rezoning to outline specific provisions for the project within that basic framework. Proposed projects would have to demonstrate the benefits to the surrounding community that warrant this flexibility, providing, for instance, features such as increased roadway or pedestrian connections, workforce housing, or habitat preservation, depending on the needs of the particular location of the planned development.

This amendment also includes clear provisions on how existing planned developments maintain their existing approvals and the process for major modifications if they are requested.

d. Self-Storage Facility Design Standards

Demand for self-storage facilities in New Hanover County remains strong as they are associated with smaller lot residential developments, “downsizing” of homes, and restrictive covenants against storage buildings common in coastal areas due to state impervious surface limits. These uses are allowed by-right in seven zoning districts, including the most common commercial district, B-2, which often lines high-visibility roadway corridors and is applied to properties at larger commercial nodes like Monkey Junction and Porters Neck. Over the past several years, self-storage or mini-warehouse facilities requested as part of conditional zoning districts have been approved subject to conditions regarding building and site design to mitigate concerns of community residents. However, projects built by-right are not subject to similar considerations, and residents and board members have asked for additional requirements to limit features like metal buildings and bright colors from being visible from roadways and adjacent residential properties.

This amendment is intended to require design standards commonly applied during conditional zoning approvals for facilities in higher visibility locations, namely the B-2 district and any other districts along College Road, Market Street, Carolina Beach Road, and Castle Hayne Road. Projects in industrial areas would not be subject to the same requirements.

The proposed design standards include the limitations on metal buildings and bright colors along with requirements that buildings adjacent to roadways or residential properties be appropriately screened and designed to look like office buildings. This amendment will also allow for accessory

storage of boats and recreational vehicles, as demand is increasing for these services, which are commonly seen as accessory uses in these types of facilities. However, it establishes standards to limit the visibility of those areas from adjacent properties.

PROPOSED AMENDMENT

The proposed text amendment is attached, with *red italics* indicating new language and ~~strike through~~ indicating provisions that are removed.

PLANNING BOARD ACTION

The Planning Board considered this request at their August 6, 2020 meeting. One person spoke in favor of the amendment, and two people—a resident of Bald Eagle Lane and an attorney representing a group of homeowners on that road—spoke in opposition to one of the boat-related legal compliance portion of the amendment. After discussion, the Planning Board determined that the proposed amendment addresses their request that a special use permit be required to add any small watercraft storage to the nonconforming community boating facilities on Bald Eagle Lane.

The Board recommended approval of the request (6-0), with Board member Jordy Rawl absent.

They found the application to be:

CONSISTENT with the purpose and intent of the 2016 Comprehensive Plan because it provides up-to-date zoning tools that reflect the plan's recommended place types and development patterns. The Planning Board also found **APPROVAL** of the proposed amendment reasonable and in the public interest because it clarifies current practices in the county's development regulations for stakeholders and code users and allows for development appropriate in suburban communities common in New Hanover County.

STAFF RECOMMENDATION

Staff concurs with the Planning Board's recommendation and **recommends approval of the requested amendment** and suggests the following motion:

I move to **APPROVE** the proposed amendment to the New Hanover County Unified Development Ordinance that clarifies current provisions, maintains consistency with legal requirements, modifies height measurements and maximums, adds flexibility for planned development projects, and outlines appropriate standards for self-storage facilities and small watercraft storage. I find it to be **CONSISTENT** with the purpose and intent of the 2016 Comprehensive Plan because it provides up-to-date zoning tools that reflect the plan's recommended place types and development patterns. I also find **APPROVAL** of the proposed amendment reasonable and in the public interest because it clarifies current practices in the county's development regulations for stakeholders and code users and allows for development appropriate in suburban communities common in New Hanover County.

Subject Articles and Sections

Article 1: General Provisions

- Section 1.7: Transitional Provisions

Article 2: Measurements and Definitions

- Section 2.1: Measurements
- Section 2.3: Definitions and Terms

Article 3: Zoning Districts

- Section 3.2: Residential Zoning Districts
- Section 3.3: Mixed Use Zoning Districts
 - Section 3.3.7: Planned Development (PD) District
- Section 3.4: Commercial and Industrial Districts

Article 4: Uses and Use-Specific Standards

- Section 4.2: Allocation of Principal Uses
 - Section 4.2.1: Principal Use Permissions
- Section 4.3: Standards for Specified Principal Uses
 - Section 4.3.2: Residential Uses
 - Section 4.3.3: Civic & Institutional Uses
 - Section 4.3.4: Commercial Uses
- Section 4.4: Accessory Use and Structure Standards
 - Section 4.4.3: Permissions for Specified Accessory Uses and Structures
 - Section 4.4.4: Standards for Specified Accessory Uses and Structures

Article 5: General Development Standards

- Section 5.4: Landscaping and Buffering
 - Section 5.4.4: Transitional Buffers
 - Section 5.4.6: Parking Lots
 - Section 5.4.7: Street Yards
- Section 5.5: Exterior Lighting
- Section 5.6: Signs
 - Section 5.6.2: General Provisions

Article 10: Administrative Procedures

- Section 10.3: Application-Specific Procedures
 - Section 10.3.4: Master Planned Development
 - Section 10.3.5: Special Use Permit