
**Town of Nags Head
Planning Board
April 21, 2026**

The Planning Board of the Town of Nags Head met on Tuesday, April 21, 2026, in the Board Room at the Nags Head Municipal Complex.

Planning Vice Chair David Elder called the meeting to order at 9:00 a.m. as a quorum was present.

Members Present

David Elder, David Thompson, Beverly Head, Basil Belsches, Brad Carey

Members Absent

Meade Gwinn, Valerie Netsch

Others Present

Kelly Wyatt, Joe Costello, Lily Nieberding

Approval of Agenda

At Staff's recommendation, Vice Chair Elder asked that the agenda be modified to hear Item 2 first. Mr. Elder then called for Approval of the Amended Agenda. David Thompson moved to approve the agenda as presented. Beverly Head seconded, and the motion passed by unanimous vote.

Public Comment/Audience Response

Former Mayor and property owner, Bob Muller advised the board on both process and technical concerns regarding the draft ordinances. He warned against assessing ordinances based on the applicant's quality, as the text amendments apply to all future sites and can be exploited if not properly written. With recent legislative changes (SB382) limiting ordinance amendments, Mr. Muller stressed cautious drafting.

For the Restaurant Waiting Lounge ordinance, he noted some concerns including definition conflict, unenforceability, 15% rule, parking, curb cuts, signage, entertainment standards and closing hours.

With regards to the Wine Bar and Taproom ordinance, Mr. Muller noted overlapping definitions with bars. He advised specifying that bars serve all alcohol types, while wine bars and taprooms sell only beer/wine. Mr. Muller also suggested that "late night" requires clearer language with regards to hours of operation.

Approval of Minutes

Vice Chair Elder asked for a motion to approve the minutes of the March 17th, 2026, meeting. Basil Belsches moved to approve the minutes as presented; David Thompson seconded, and the motion passed unanimously.

Action Items

Consideration of a Board of Commissioners initiated UDO text amendment to establish new allowable uses, "Wine Bar" and "Taproom" with associated supplemental regulations.

Planning Director Kelly Wyatt presented the proposed UDO text amendment, which was initiated by the Board of Commissioners following its April 15, 2026 mid-month meeting. Ms. Wyatt noted that during that meeting there was significant discussion about the risk that the Restaurant Waiting Lounge, as previously drafted, could operate as a standalone bar, a use the town has long sought to prohibit. In response, the Board of Commissioners directed staff to draft an ordinance establishing Wine Bar and Taproom as new, defined principal uses with supplemental regulations designed to keep them clearly distinct from a bar.

Ms. Wyatt acknowledged a process shortcoming: staff had assumed a shared understanding of what constitutes a "bar" based on historical conversations, without ever formally asking the Planning Board or Board of Commissioners to define what they felt represented "bar". She described her awareness of the town's core concern as the scenario in which a restaurant transitions during evening hours from full food service to limited or no, food service and full bar and alcohol service, accompanied by entertainment, dance floor, standing-room atmosphere, noise complaints, various disturbances, the characteristics most frequently associated with negative public safety and noise impacts. Ms. Wyatt noted that in the context of reviewing requests, it was these characteristics, or impacts that were attempted to be mitigated.

Ms. Wyatt explained that the amendment proposes three defined uses and reviewed the suggested definitions:

- *Bar, Tavern, and Drinking Establishment:* An establishment where the primary activity is the on-premises sale and consumption of alcoholic beverages, including beer, wine, and/or distilled spirits, where food service is limited or incidental. Characteristics include absence of a full-service kitchen, service of distilled spirits as a principal component, extended hours, indoor/outdoor entertainment, and a layout oriented toward bar service rather than seated dining.
- *Wine Bar:* An establishment primarily engaged in the on-premises sale and consumption of wine or beer where distilled spirits are prohibited, and wine offerings are limited to traditional table wines (excluding fortified wines or high-alcohol products used in mixed beverages). Food service may be provided but is not required. The establishment must be designed for seated patron service within an enclosed indoor space.
- *Taproom:* Substantially identical to Wine Bar in structure, but focused on beer, and may be operated as accessory to a microbrewery or independently.

Ms. Wyatt then reviewed the Zoning considerations noting that both Wine Bar and Taproom are being proposed as permitted uses with supplemental regulations in the C-1, C-2, C-4, and C-5 zoning districts, mirroring where microbreweries are currently permitted but excluding the CR district. They are proposed as permitted uses (with supplemental regulations) rather than special uses, reflecting their lower intensity compared to microbreweries.

Finally, Ms. Wyatt reviewed for the Board the proposed supplemental regulations under the UDO 7.31.A:

- Sale, service, and consumption of distilled spirits is prohibited.
- Limited retail sales of products offered on-premises (e.g., bottled wine or beer to go) are permitted.

- Food service may be provided but is not required; food may be prepared on- or off-site, but food trucks are not permitted under this section.
- The establishment shall not operate in a manner consistent with a bar, tavern, or nightclub and shall be designed for seated patron service.
- The establishment shall not be open between 11:00 PM and 7:00 AM.
- Indoor entertainment is permitted, subject to the town's noise ordinance; outdoor entertainment is prohibited entirely.
- Outdoor customer service areas may be permitted as accessory use, limited to seated service, not to exceed 500 square feet or 25% of the indoor customer service area (whichever is less); no outdoor bar service; areas must be physically delineated by fencing or landscaping.
- Parking is calculated at 1 space per 55 square feet of customer service area, consistent with the restaurant and microbrewery standards.

Based upon their review, Staff would recommend approval of the proposed text amendment with the associated definitions and supplemental regulations.

Mr. Thompson began by commending staff for producing a detailed and substantive draft within approximately one and a half days following the Board of Commissioners' meeting. Mr. Belsches inquired about the origins of the anti-distilled-spirits distinction and where the wine bar and taproom concept emerged. Ms. Wyatt explained that the distinction reflected the Board of Commissioners' relative comfort with beer and wine as lower-intensity uses, referencing the common understanding that distilled spirits are more closely associated with bar-type operations.

Jay Overton of Albemarle & Associates, representing the applicant for the next item, addressed the board and raised a broader concern: the difficulty in drawing a meaningful regulatory line between a "bar," a "wine bar," and a "taproom" when all three involve on-premises alcohol consumption. He questioned whether the regulatory concern was truly about the type of alcohol being served, or rather about the behaviors and impacts associated with bar-type environments: noise, late hours, standing-room crowds, and entertainment. He suggested that focusing on operational characteristics and consequences, rather than the specific type of alcohol, would produce clearer and more defensible standards.

Mr. Thompson acknowledged the multifaceted nature of the issue, noting that it involves public safety, neighborhood impacts, operator viability, and broader social attitudes toward alcohol, and that not all of these concerns could be resolved in a single meeting.

Mr. Carey expressed general support for the incremental, town-wide approach represented by the wine bar and taproom ordinance, contrasting it favorably with the site-specific focus of the restaurant waiting lounge amendment. He asked whether there was a future pathway to revisit the distilled spirits prohibition. Ms. Wyatt confirmed that nothing would prevent the board from expanding the ordinance after observing how the initial uses operated in practice.

After lengthy discussion, the Board reached consensus on the following changes before the ordinance proceeds to the Board of Commissioners:

- *Bar definition:* Remove "or" and replace with "and" in the list of alcoholic beverages (beer, wine, *and* distilled spirits), so that the definition of a bar requires all three categories and does not inadvertently capture wine bars or taprooms.
- *Wine Bar and Taproom definitions:* Replace references to "high alcohol products" with the more precise term "distilled spirits."
- *Hours of operation:* Keep as proposed: prohibiting operations between 11:00PM and 7:00 AM.

- *Indoor entertainment:* Remove the subjective characterizations of "low intensity," dance floors, DJs, and nightclub-style operations. Replace with a straightforward requirement that indoor entertainment must comply with the town's existing noise ordinance, while remaining subordinate and incidental to the primary use. Outdoor entertainment remains prohibited entirely.
- *Outdoor service:* Revise "no outdoor bar service" to "no outdoor sales," to clarify that beverages must be purchased indoors and may then be taken outside to a seated area, but that no sale transaction may occur outdoors.

Consideration of revised language for a previously submitted UDO text amendment by Albemarle & Associates, Ltd., on behalf of Blue Moon Five-2 (Blue Moon Restaurant), to establish a new use titled "Restaurant Waiting Lounge."

Ms. Wyatt presented the revised draft of the Restaurant Waiting Lounge ordinance, which had been tabled by the Board of Commissioners following its April 15 meeting due to concerns that the use, as drafted, could operate as a standalone bar. She noted that the Planning Board had already provided a formal recommendation on this item and that today's discussion would serve to supplement that record with the board's refined views.

Ms. Wyatt proceeded to review key revisions to the proposed ordinance:

- Refinement of the definition to clarify that a Restaurant Waiting Lounge is only permitted as part of a single principal Restaurant, Sit Down use on a unified site. This revision limits applicability and ensures the use is not permitted within multi-tenant commercial developments or shopping centers.
- Additional language reinforcing the accessory and subordinate nature of the use, including a limitation that the indoor customer service area of the waiting lounge shall not exceed fifty percent (50%) of the principal restaurant.
- Establishment of hours of operation, requiring the waiting lounge to close no later than 11:00 p.m. and no later than one hour prior to the closing time of the principal restaurant.
- Clarification of operational and business integration, including provisions that the waiting lounge shall not operate independently, shall not be separately advertised, and must remain fully integrated with the principal restaurant in terms of branding and operation.
- Enhanced limitations on entertainment, allowing only low-intensity indoor entertainment that is incidental to the use and prohibiting all outdoor entertainment.
- Additional restrictions on outdoor customer service and patron areas, including limitations on size, requirements for seated use, and requirements for physical delineation and screening to provide privacy and minimize impacts to adjacent properties.
- Clarification of unified development and site design expectations, including continued requirement for approval as part of a unified development plan and provision of a clear pedestrian connection when located across a public street or right-of-way.

Ms. Wyatt noted that these revisions are intended to address concerns raised by the Board and further ensure that the Restaurant Waiting Lounge remains a limited, accessory use that does not function as a bar, tavern, or independent drinking establishment and noted that Staff is seeking the Planning Board's input on these updates, including whether the revisions adequately address the concerns raised, and whether the Planning Board would continue to recommend adoption of the text amendment as revised, or has any additional comments or recommendations for further refinement.

The Board began another lengthy discussion which was wide-ranging and at times intersected with the broader debate about what the town is trying to achieve.

Mr. Elder raised the issue created by the physical separation of the two parcels by a roadway, noting that while the applicant frames the two structures as one unified operation, the road creates a boundary that makes it difficult to treat them as truly integrated. He questioned whether what was being constructed was, in practical terms, two separate businesses under one ownership.

Ms. Head questioned the use of the word "lounge," suggesting the connotation was problematic and that "waiting area" or "waiting room" might better reflect the intended purpose. Mr. Overton, on behalf of the applicant, indicated there was no objection to changing the terminology.

Ms. Wyatt candidly acknowledged two persistent concerns: first, the inherent difficulty of enforcing who enters the waiting area and whether they genuinely intend to dine at the restaurant; and second, the unresolved tension between the proposed use and the town's definition of a bar, particularly because the applicant wishes to serve distilled spirits, which under the newly amended bar definition would be a characteristic of a prohibited use.

Ms. Wyatt acknowledged that if the board and community genuinely believe the Unified Development Plan framework cannot be enforced as a practical matter, that is the central hurdle, and no amount of additional text will likely resolve it. She also noted the risk under Senate Bill 382 of creating new entitlements that cannot subsequently be retracted.

Mr. Carey expressed concern about equity: the restaurant waiting lounge, as structured, effectively allows a restaurant to gain additional entertainment and bar space, beyond the existing 15% accessory entertainment cap, provided it can afford to purchase an adjacent property and construct or repurpose a separate building. He argued this creates an uneven playing field for restaurant owners who lack adjacent properties or the capital to acquire them.

Ms. Wyatt acknowledged this, but noted that from a planning perspective, financial capacity is not typically a consideration, but the structural inequity was a valid policy question for the board.

Ms. Wyatt explained the possibility that, should the wine bar and taproom ordinance be adopted, Blue Moon could alternatively apply for a wine bar or taproom at the Keeper's Galley site as its own principal use, without any of the waiting lounge restrictions. However, she noted this would not solve the applicant's parking problem (which was the impetus for this proposed amendment) and could in fact exacerbate it by generating independent parking demand from two separate high intensity uses.

Mr. Overton addressed the board and emphasized several points: the ordinance, if adopted in general form, would still require a site-specific special use permit process before any individual application was approved, giving the board and commissioners the opportunity to impose additional conditions. He argued the restaurant waiting lounge concept addresses a genuine and broadly shared problem, the lack of conditioned, comfortable waiting space during peak season, and that restaurant owners have a strong financial self-interest in ensuring the space is used for its intended purpose, as allowing non-diners to occupy waiting space directly undermines the restaurant's revenue model.

Mr. Muller interjected to clarify one numerical point: the 50% figure in the waiting lounge ordinance is not analogous to the 15% cap in the restaurant sit-down standards. The 50% refers to 50% of the customer *seating* area (which itself is a subset of total building area), whereas the 15% applies to total building square footage for accessory entertainment. He argued there is no cap in the proposed ordinance on how much of the waiting area can be dedicated to bar service or entertainment, which is a substantive gap.

After further discussion, the Board reached consensus on the following changes before the ordinance proceeds to the Board of Commissioners:

- *Terminology:* "Lounge" to be replaced with "area", "room", or other comparable term throughout the ordinance text.
- *Signage:* The board agreed that the waiting area, as a true accessory use, should not receive freestanding signage. Wall signage was discussed as an acceptable compromise to allow for identification (including for emergency services purposes) without advertising the space as an independent establishment.
- *Entertainment:* Consideration of whether to eliminate indoor entertainment altogether, given the concern raised by Board Member Thompson that entertainment will draw patrons who have no intention of dining at the restaurant, thereby defeating the purpose of the use.
- *Hours reconciliation:* Sections 7.31.3.10 and 7.31.3.12 contain conflicting closing-time provisions; staff to reconcile into a single, clear standard closing at 11:00 PM, with the waiting area closing no later than the principal restaurant.
- *Bar definition conflict:* Staff to resolve the internal conflict between the prohibition on operating as a bar and the applicant's desire to serve distilled spirits; revised language to reframe the prohibition in affirmative rather than negative terms.
- *Parking and customer service area:* Language to be added explicitly prohibiting the use of excess parking spaces to expand the approved customer service area; any change to the approved customer service area to require a special use permit amendment.
- *15% consistency:* Staff to undertake an exercise, in consultation with the applicant's representative, to evaluate whether applying the aggregate restaurant sit-down standards (20% kitchen, 75% full-service seating, 15% accessory entertainment) across the combined floor areas of the principal restaurant and the waiting area produces a compliant result.

Ms. Wyatt indicated she had sufficient direction to prepare a revised recommendation for the Board of Commissioners. She noted that, procedurally, the Planning Board had already submitted its formal recommendation; the revised staff report would frame the additional discussion as supplemental context and note that the board's continued general support is subject to the outstanding concerns noted above.

Report on Board of Commissioners Actions – April 1st and April 15th, 2026

Ms. Wyatt briefly reviewed the actions from April 1st and April 15th Board of Commissioners meeting, including: Dark Sky Week Proclamation: The town issued a proclamation for Dark Sky Week. Planning staff member Chris Trembly organized a well-attended stargazing event at Town Park on Saturday, April 18, in partnership with the local astronomy club. Tick-Borne Illness Awareness: The town also issued a proclamation for tick-borne illness awareness week, noting that field staff should remain vigilant given increased tick activity. Hospital Parking Reduction: A consent agenda item related to a parking reduction for the hospital's HVAC upgrade is proceeding to the Board of Commissioners. Division of Water Infrastructure Septic Health Grant and Zero-Interest Loan Program: Ms. Wyatt provided a brief update on this program, noting that a mailer is being prepared for distribution to all property owners, including commercial, in the coming weeks. The number of applications received has increased dramatically since the last update, and the town has allocated most of its available funding. A more thorough presentation is planned for a future Planning Board meeting when the agenda allows adequate time. Sand Relocation Program: The sand relocation program is nearing its seasonal deadline. The final application numbers were not yet available but will be reported at the next meeting.

Town Updates

None

Discussion Items

Planning & Development Director's Report – April 1st, 2026

Ms. Wyatt briefly reviewed her Director's Report which included updates on Arts and Culture, Dowdy Park, Septic Health Advisory Committee, Sand Relocation and Cost Share Program as well as the acquisition of two new art masts, one of which pays homage to Kerry Oaksmith Sanders, wife of Commissioner Bob Sanders, who recently passed away. The Art Mast will be installed at Bittern Street across the street from Tortugas.

Update on Strategic Plan from February 2026 Board of Commissioners Retreat.

The Board agreed to table this item until the May meeting.

Planning Board Members' Agenda

None

Planning Board Chairman's Agenda

Adjournment

A motion to adjourn was made by Beverly Head. The time was 12:40 PM.

Respectfully submitted,
Lily Campos Nieberding