
**Town of Nags Head
Planning Board
November 15, 2022**

The Planning Board of the Town of Nags Head met on Tuesday, November 15, 2022, in the Board Room at the Nags Head Municipal Complex.

Chair Vaughan called the meeting to order at 9:00 a.m. as a quorum was present

Members Present

Megan Vaughan, Kristi Wright, Molly Harrison, Meade Gwinn, Megan Lambert, David Elder, Gary Ferguson

Members Absent

None

Others Present

Kelly Wyatt, Kate Jones, Andy Garman, Lily Nieberding

Approval of Agenda

Chair Vaughan asked for a motion. David Elder moved to approve the agenda as presented. Meade Gwinn seconded, and the motion passed by unanimous vote.

Public Comment/Audience Response

Duke Geraghty with the Outer Banks Home Builders spoke against the updates to the tree ordinance noting that he believes it goes against property rights. Mr. Geraghty also noted that he had a large live oak at one of his properties that gave him a lot of trouble, and nothing would grow under it.

Mr. Rick Arthur, Nags Head property owner, spoke against the Affordable Housing proposal at Hollowell Street. Mr. Arthur does not believe the location to be a good fit, nor would it solve the issue of workforce housing; he would like to see it rezoned.

Mr. Basil Belsches, Nags Head property owner, spoke in opposition to the Affordable Housing proposal at Hollowell Street. Mr. Belsches does not believe the location to be a good fit with the character of the surrounding area and would also like to see it rezoned away from C2.

Mr. Michael Mischou, Nags Head resident, also spoke in opposition to the Affordable Housing proposal at Hollowell Street. Mr. Mischou does not believe the proposal is a good fit with the area and believes it to be a permanent solution to a temporary problem.

Approval of Minutes

Chair Vaughan asked for a motion to approve the minutes of the October 18, 2022, meeting. Meade Gwinn moved to approve, Kristi Wright seconded, and the motion passed by unanimous vote.

Action Items

Consideration Of Special Use Permit/Site Plan Review submitted by Chris Greening of TW's Bait and Tackle for the reduction of three (3) required parking spaces with the use of bicycle racks pursuant to Section 10.15.2.5 of the Unified Development Ordinance. The property is zoned C-2 General Commercial and is located at 2230 S. Croatan Highway, Nags Head

Planning Director Kelly Wyatt explained that Chris Greening on behalf of TW's Bait & Tackle had submitted a Special Use/Site Plan Review for the purpose of consideration of the reduction of three (3) required parking spaces with the use of three (3) bicycle racks pursuant to Section 10.15.2.5 of the UDO.

Ms. Wyatt presented the site plan of the property noting that it is located at 2230 S. Croatan Highway. The Existing Land Use is Retail and the property is zoned C-2, General Commercial Zoning District. The property is located in an X Flood Zone, per the Town of Nags Head local ordinance, the property is subject to an RFPE/LES of 9 ft. however Ms. Wyatt noted there are no structures associated with this request.

Ms. Wyatt explained that the applicant intends to increase the overall retail space at TW's by constructing a mezzanine, adding approximately 1,568 square feet of area. This increase in floor area requires five (5) additional parking spaces. The applicant can accommodate two (2) of the five required spaces within the existing parking lot. The remaining three (3) parking spaces are being requested to be reduced with the use of the proposed bicycle racks.

Ms. Wyatt proceeded to review the Applicable Zoning Regulations:

- Use Regulations: Section 10.15.2.5, Reduction of Required Parking for Commercial Uses with the use of Bicycle Racks by Special Use Permit states:

The total parking requirement for a proposed non-residential use may be reduced by up to three parking spaces at a rate of one parking space per bike rack if one or more bicycle racks are located on the site provided that:

10.15.2.5.1. The subject property has frontage along a two-lane roadway, or a sidewalk or similar path crosses the property or is located along the frontage of the property;

10.15.2.5.2. Each bicycle rack must be highly visible and conveniently located in close proximity to the entrance of the principal structure.

10.15.2.5.3. Each bicycle rack must support at least five (5) bicycles.

10.15.2.5.4. Parking reduction shall not exceed more than one (1) parking space per ten (10) parking spaces provided.

Ms. Wyatt noted that the property has frontage on Satterfield Landing Road, a two-lane roadway as well as a sidewalk that crosses the property alongside US Highway 158. The bicycle racks have been proposed in highly visible locations and in close proximity to the entrance of the structure. Additionally, the proposed bicycle racks would support a minimum of five (5) bicycles. Based upon this review, staff finds that the requested parking space reduction is compliant with the use standards noted.

- Lot coverage: The additional parking spaces are required to serve a proposed 1,568 square foot addition of retail space within the existing footprint. No additional lot coverage is being proposed at this time.
- Height, Architectural Design Standards, Buffering/Landscaping, Lighting, Signage and Stormwater Management: The proposed request for required parking reduction does not necessitate any revisions to these elements.

Should the Special Use/Site Plan Review request for reduction of three (3) required parking spaces via the use of bicycle racks be approved, the applicant will then submit a complete development application for interior building improvements which can be reviewed and approved administratively. Approval of the existing septic system with regard to the increased retail area will be required prior to issuance of any building or zoning permits.

Traffic circulation has been reviewed and approved by the Town Engineer.

The project will be required to comply with all applicable NC Fire Prevention Code requirements as part of building permit application review and issuance. While it is not part of the Special Use/Site Plan Review request, the proposed location of the two new parking spaces between the principal structure (TW's Bait and Tackle Retail) and the accessory storage structure, has been reviewed and approved by Deputy Fire Chief Shane Hite with the condition that exit doorways and access to public ways must be always maintained and unobstructed. This will be confirmed as part of the administrative review.

The Public Works Director has reviewed and approved the proposed Special Use/Site Plan as presented.

Planning staff finds that the proposal is consistent with the applicable use and development standards, as well as relevant land use policies and based upon their review would recommend approval of the Special Use/Site Plan Review as presented.

Ms. Wyatt noted that she was available to answer any questions for the Board, as well as the applicant Mr. Greening and his architect Mark Kasten.

Ms. Wyatt confirmed for Mr. Ferguson that storage buildings are an accessory use to a principal retail structure and there is no separate parking standards for storage buildings.

Chair Vaughan asked if there was a need for overflow parking and questioned if there have even been any parking issues at the site. Ms. Wyatt noted that staff does not get a lot of complaints.

Mr. Elder noted that due to the nature of the business it's not uncommon to see truck towing boats and trailers and it can get congested, especially during the season.

Applicant Chris Greening addressed the Board. If the bike racks are approved, it would allow them to have more customer service area. They currently have a lot of unused office space that they would like to convert to customer service area to give them more flow and aisle space. Mr. Greening stated that he sees a lot of bike activity because of good weather; he as well as other staff members sometimes bike to work.

Mr. Greening confirmed for Mr. Gwinn that they will be adding two additional parking spaces, noting that his staff parks in the back between warehouse and store.

Mr. Gwinn and Ms. Harrison stated that they were in favor of the proposal.

Chair Vaughan stated that she too was in favor of the proposal and would support a local business.

Ms. Harrison agreed noting that it would support/encourage biking.

David Elder moved to approve the Special Use/Site Plan as presented. Megan Lambert seconded, and the motion passed by unanimous vote.

Presentation Of Draft Appendix to the Unified Development Ordinance outlining existing and proposed ordinance language pertaining to tree removal and preservation regulations.

Deputy Planning Director Kate Jones presented a draft of the requested Appendix C to the Board.

Members of the Planning Board had expressed an interest in better understanding and considering potential changes to the Unified Development Ordinance (UDO) and regulations to clarify and strengthen the Town's language as it relates to tree protection and preservation standards as well as remedies for unauthorized tree removal.

At the May – September 2022 Planning Board meetings, informal discussions on tree protection and mitigation were held. Staff synthesized the comments and suggestions into draft ordinance language for the Board's review at their meeting in October. At that meeting, the Board requested that the recommended language be formatted into an Appendix, which would contain Town regulations that pertain to tree preservation, removal and replanting. Staff created Appendix C for the Board's review.

Ms. Jones reminded the Board that this was a directive from the Board of Commissioners. They asked Staff to strengthen and clarify the existing tree regulations.

Ms. Jones then discussed some key facts about trees and why they are an important natural resource: They filter groundwater, stabilize soils, prevent erosion and sequester carbon in the atmosphere. In addition, a lot of money is spent on Stormwater Management and trees are very effective in the uptake of water.

Ms. Jones then proceeded to review the Appendix for the Board.

The Appendix is organized into 9 sections and includes an Overview section, a section on Vacant Lots, Special Planned District (SPD) 20, Special Environmental District (SED) 80, Official Town Tree – Live Oak (all zoning districts), Replanting Guidelines – Table A, Key Definitions, Applicant Resources and the Town Zoning Map.

Mr. Gwinn addressed Mr. Geraghty's earlier comments about having a large Live Oaks and that nothing was able to grow underneath it. Mr. Gwinn suggested maybe adding a list of plants that would grow under the shade of a Live Oak.

Ms. Lambert spoke in favor of going from a ten-foot perimeter to a twenty-foot perimeter around a structure, noting that it will help homeowners especially when it comes to storms.

Mr. Elder spoke in favor of the Appendix stating that it has helped clarify the existing language. Mr. Elder also reiterated the benefits of trees including the fact that they benefit the economy and aid in reducing noise, wind, and heat.

Ms. Lambert agreed with Ms. Jones on the huge importance of trees for Stormwater Management. Ms. Lambert noted that when looking at the areas that have the biggest issues with flooding it's areas that don't have any or very few trees.

Chair Vaughan asked Ms. Jones to speak more about nuisance trees, maybe limbs that are threatening a structure or decks, that's not something that someone has to live with. Ms. Jones agreed noting that if it's a hazard (possibility of hurting someone or damaging the property) it can be removed. A tree that is in progressive decline or diseased can also be removed.

Ms. Harrison asked how staff would follow up with property owners that have to replant a tree and have a year to do it; how would that be monitored? Ms. Jones noted that Staff would have to track and work closely with the property owners or contractor to ensure that it's done and done at the appropriate time. Ms. Jones confirmed that if it was not done there would be a fine.

Mr. Ferguson inquired if there is a monetary value placed on trees; knowing the financial value of, for example, a 20-year-old tree would help people in their decision making when it comes to tree removal.

Ms. Jones noted that there is a tool to measure the quantitative value of a tree. Ms. Wright pointed out that some of those trees can't be easily replaced; they've been growing for hundreds of years and you can't just go out and buy one that size.

Mr. Ferguson stated that he would like to have staff map out the areas that have vegetated buffers along US 158 and the ROW; those areas need to be identified and protected. Ms. Jones stated that they would be working on that next.

After some further discussion, David Elder moved to approve the Appendix as presented. Meade Gwinn seconded and the motion passed unanimously.

Report on Board of Commissioners Actions – November 2, 2022

Planning Director Kelly Wyatt gave an update on recent Board of Commissioner Actions, of note: 2022 Earl Murray, Jr. Employee of the Year Nominees were presented - the winner will be announced at the Board's December meeting; a Public Hearing was held to consider a Special Use/Site Plan Review for the construction of a Trade Center – the Board approved the Special Use/Site Plan as presented; a Public Hearing was held to consider Special Use/Site Plan Review submitted by the Town of Nags Head for the redesign and construction of various Public Works facilities as a result of the Public Services Facilities Master Plan – The Board approved the Special Use/Site Plan as presented; Code Enforcement Officer Chris Trembly gave an update on Beach Concierge Services - Staff has no specific action to take at this time except to meet with the beach concierge companies to review the issues noted and some possible changes moving forward; the Board adopted a resolution accepting for dedication the improvements made to the Coastal Villas Subdivision as presented; Town Manager Garman gave a presentation on the Town's short-term rental registration ordinance - it was Board consensus to begin the process to re-evaluate the Town's short-term rental registration ordinance (Ms. Wyatt noted that this item will be discussed later on in today's Planning Board's agenda).

Town Updates

None

Discussion Items

Discussion Of the Historic Character Area as set forth within the 2022 CAMA Land Use Plan/ Comprehensive Plan and review of current ordinances and existing land uses as it pertains to the recently adopted moratorium.

Ms. Wyatt explained that at their October meeting the Board of Commissioners adopted a moratorium on all non-residential developments located within the C-2, General Commercial Zoning District applicable to the areas from Danube Street north to Hollowell Street, between US Highway 158 and NC12. This moratorium is in place for 150 days and the moratorium document states that the Planning Board and Staff will have three meetings to discuss and conduct a detailed review of the Town's Zoning Map and its consistency with the Town's Comprehensive Land Use Plan. Planning staff will work alongside the Planning Board to provide research information, conduct analyses, complete community engagement activities, and recommend appropriate alternatives that may result. Any recommended ordinances or zoning map amendments will be forwarded to the Board of Commissioners for scheduling of a public hearing at their February 1, 2023, regular meeting.

Ms. Wyatt noted that the area that the moratorium applies to has been categorized by the Town's Comprehensive Land Use Plan as the Historic Character Area. The development goal of this area is to preserve and integrity of Jockey's Ridge and the Historic Cottage Row, which is a National Register Historic District consisting of 41 contributing homes along the oceanfront and two structures on the west side of NC 12.

Ms. Wyatt stated that an excerpt of the Town Comprehensive Land Use Plan that speaks to the Historic Character Area was included in the agenda packet for the Board's review and noted that a key takeaway from this character area is that this area should consist of neighborhood scale, commercial/residential development patterns with single-family dwellings and neighborhood serving businesses consistent with the size and scale of the cottages in Historic Cottage Row.

In review of the Historic Character Area, the identified appropriate land uses and density/intensity and design characteristics, staff would submit that the current C-2, General Commercial zoning is likely not appropriate for this area. Having read the parameters of the Historic Character Area, staff would like to initiate discussion with the Planning Board about what might be the most appropriate zoning district(s) for this area. Ms. Wyatt presented a map to the Board (which was included in staff's report) of the area subject to the moratorium, the current zoning designation as well as the existing land uses.

Potential districts for consideration of a more appropriate zoning designation include the R-1, Low Density Residential Zoning District, the R-2, Medium Density Residential Zoning District, the R-3 High Density Residential Zoning District and the C-1, Neighborhood Commercial Zoning District. Ms. Wyatt noted that the intent of each of these districts was provided as an attachment to the staff report for the Board's review.

As the Board contemplates the area subject to the moratorium, the Historic Character Area and the various zoning designations that may be better suited, Ms. Wyatt asked them to keep in mind that there may not be a "one size fits all" approach to aligning this area with the identified goals of the Historic Character Area. Consideration may be given to rezoning this area to a single zoning designation or multiple zoning designations. For instance, should you find that the C-1, Neighborhood Commercial District aligns closely with stated goals of the Historic Character Area, however there is a

need for pockets of a residential zoning designation, that can certainly be explored in more detail as the Board moves forward.

Likewise, should the Board's review of the potential zoning designations and their developmental standards result in the need for text amendments to the Unified Development Ordinance, staff can do that as well. The Board and staff can also discuss the creation of an entirely new zoning district or overlay district should they determine that the existing options available are not adequate.

Ms. Wyatt noted that while the Board may find that there is a zoning district designation better suited for this area, the zoning district alone would not offer any architectural protection for residential structures. In 2015 restrictions on local residential standards were adopted. S.L. 2015-86 became effective law in North Carolina on June 19, 2015 and prohibits the regulation of "building design elements". This prohibition covers exterior building color, type or style of exterior cladding material, style or materials of roofs or porches, exterior nonstructural architectural ornamentation, location of architectural styling of windows and doors, including garage doors, location of rooms, and interior layout of rooms. These limits have been codified as NCGS 160D-702(b). While it requires more research, the only way to provide some level of architectural protection in this Historic Character Area may be to establish an overlay district, with architectural considerations that would complement the character of Historic Cottage Row.

As previously stated, this is the first of three meetings where staff will be discussing the Historic Character Area with the Planning Board. At this time, Ms. Wyatt envisions this first meeting being an open dialogue with the Planning Board, with the intent of providing more detailed options at the Planning Board's second meeting (December 13th) based upon feedback received.

Finally, Ms. Wyatt reviewed for the Board the attachments that were included in the agenda packet: the adopted moratorium (Ord No. 22-10-020), relevant excerpts from the Comprehensive Land Use Plan, a map of the current zoning designations and existing land uses, Dare County tax card for commercial structures within the area subject to the moratorium to include finished area of structures, and excerpts of the UDO relating to the intent of various zoning districts.

The Board's primary focus and discussion centered on current/existing zoning regulations, possible incompatible land uses, what would happen to any non-conformities that are created if the area is rezoned and what types of protections are currently in place for the historic district.

Ms. Wyatt confirmed for Mr. Ferguson that the application from BK & Associates that was approved a few months ago is excluded from the moratorium.

Ms. Wyatt confirmed for Mr. Ferguson that while there is some split zoning in the town, there are no properties that are split zoned in the moratorium area.

Ms. Wyatt reviewed for Mr. Ferguson and the Board the list of permitted and special uses in the C1 Zoning District. Ms. Wyatt confirmed that Multi-Family Dwelling is currently allowed as a use in the C1 District. Ms. Wyatt noted that if they find a use that they feel is incompatible with a District the Board could consider text amendments.

Ms. Harrison asked about existing commercial uses and what would happen to them if the area were rezoned. Ms. Wyatt explained that they would become non-conforming; they could remain and could make repairs, but they would be limited to how much they could expand.

Ms. Wyatt confirmed that Staff does not have a recommendation at this point in time but does think that it's not one size fits all and more likely will be a combination of things.

Update On the Town's Short-Term Rental (STR) Program

Ms. Wyatt noted that she had touch on this item briefly during her report on BOC actions. Ms. Wyatt explained that in April 2019 the Board of Commissioners adopted amendments to the Town Code and Zoning Ordinance (now the Unified Development Ordinance) defining short term rentals (STRs) and establishing regulatory requirements for short term rentals within the Town.

The goal of adopting of this short-term rental registration program was to understand the location of STRs within the Town, to establish a point of contact with the operator to ensure they can be contacted in case of an emergency, to provide information regarding specific insurance and tax obligations of those conducting rental activities within single-family dwellings and to inform operators of the safety requirements and other relevant provisions of the North Carolina Vacation Rental Act. Recently, the North Carolina Court of Appeals ruled in *Schroeder v. City of Wilmington* that state law prohibits a registration requirement for short-term rentals, but the court also ruled that state law allows for general zoning and development standards for short-term rentals. The UNC School of Government has written an informative blog about this ruling and what it means specific to local ordinances.

Planning staff is working with the town attorney to better understand the outcome of this ruling and how it affects the town's local regulations. While it seems apparent that the Town we will need to rescind the STR registration program, it appears there may be a mechanism to continue to regulate STRs within the Town in such a way that they can still achieve the original stated goals.

It was Staff's intent to bring this item to the attention of the Planning Board, and Staff hopes to return to the Planning Board in December or January with further recommendations.

Ms. Wyatt confirmed for Chair Vaughan that to date this has been a voluntary registration program, however the court ruling would still prohibit it, even if though it's voluntary.

Planning & Development Directors Report, October 28, 2022.

Ms. Wyatt discussed her Director's Report to the Board which included: the Department's Monthly Activity Report, important meetings of note, an update on Board of Adjustment applications - there were no items for Board of Adjustment consideration in October 2022; DWMP/Voluntary Septic Subscription Service - After discussion among all the members of the working group, it was the consensus that the town does not pursue the voluntary septic subscription service at this time given the concerns. Members felt as though efforts would be better spent improving upon the existing program, putting increased energy and efforts into more community outreach and education, having a more visible role in the community, and participating in activities to help inform citizens of the program. Members of the working group and staff agreed that having an on-going septic health advisory committee that met quarterly, to discuss the successes and challenges of the program and to provide input as we begin to implement the recommendations of the DWMP would be beneficial.

Mr. Ferguson inquired if the Committee had discussed the idea of mandatory septic inspections. Ms. Lambert (who is a member of the committee) noted that there are not enough service providers available that could do inspections if the Town were to mandate them. This led to a discussion among the Planning Board about septic inspections and failing septic systems.

Other items of note included an update on the Estuarine Shoreline Management Plan, NC Resilient Coastal Communities Program, EV Action Plan, Whalebone Park: Phase 1 Planning, Dune Management Cost Share Program, 2022 CRS Recertification and upcoming Dowdy Park Events/Farmers Market/Holiday Markets/Art & Culture.

Planning Board Members' Agenda

None

Planning Board Chairman's Agenda

None

Adjournment

A motion to adjourn was made by David Elder. The time was 11:47 AM.

Respectfully submitted,
Lily Campos Nieberding