Town of Nags Head
Planning Board
December 13, 2022

The Planning Board of the Town of Nags Head met on Tuesday, December 13, 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, David Elder, Gary Ferguson

Members Absent

Megan Lambert

Others Present

Kelly Wyatt, Kate Jones, Andy Garman, Lily Nieberding

Approval of Agenda

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

Public Comment/Audience Response

Mr. Michael Mischou, Nags Head resident, spoke in favor of rezoning the district around the Historic Character Area. Mr. Mischou would encourage the Board to follow the spirit of the comprehensive plan in order to better protect that area for years to come.

Approval of Minutes

Chair Vaughan asked for a motion to approve the minutes of the November 15, 2022, meeting. Kristi Wright moved to approve the minutes as presented. David Elder seconded, and the motion passed by unanimous vote.

Presentation of Soundside Event Center Concept

Dare County Tourism Board Chair Tim Cafferty shared their vision for the Event Center and Site with the Planning Board. Mr. Cafferty stated that this is a concept not a final building design or operating plan. The DCTB created an Advisory Committee to begin the process; Mayor Ben Cahoon and former Commissioner Webb Fuller represented the Town in this committee. The committee was tasked with developing an economically viable Indoor Event Center hosting groups of 300 or more. These events would grow out-of-market visitation during non-summer months (the mission of DCTB). Examples of these types of events would include: Banquets, Galas, Sporting Events, Concerts as well as a Culinary Training Kitchen. Mr. Cafferty noted that currently, Dare County lacks a large indoor facility for these types of events.

Mr. Cafferty explained that an Indoor Event Center would be projected to generate more than $1,171,000 in new tax revenue, 14,000 new room nights and approximately 191 new jobs. Mr. Cafferty then presented an aerial view of the property showing a conceptual site plan which would include the event center and a boardwalk.

Lee Nettles was next to address the Board. Mr. Nettles is the Executive Director of the Dare County Tourism Board. Mr. Nettles presented a conceptual drawing of the proposed building which would include an event hall, meeting room, training/test kitchen and lobby w/restrooms. Mr. Nettles stated that the approximate size of the facility would be 48,275 square feet and would be similar in size to the Nags Head Food Lion (Outer Banks Mall). Mr. Nettles noted that the convention center in Virginia Beach is ten times the size of what they are proposing.

Mr. Nettles discussed the conceptual site plan showing where the building might be situated, noting that the Pamlico Jack's property would be demolished and used as overflow parking. Mr. Nettles noted that in using this site layout 75% of the viewshed would be preserved, the proposal would also remove two curb cuts and add inner-property connectivity end-to-end.

Mr. Nettles then discussed issues that will need to be addressed including possible Town planning hurdles (Parking, Building size, etc.), State requirements (Septic, Stormwater, Traffic Signal) as well as DCTB & County issues (Rough Order of Magnitude Cost, Operating Deficit as well as Construction Funding & Financing. Mr. Nettles also discussed the need to reach community consensus on the plan.

Mr. Nettles confirmed for Ms. Wright that social uses such as weddings and banquets will be one of the use types. Mr. Nettles noted that they will be targeting a group size between 300 and 2500 people.

Mr. Gwinn expressed concern with pedestrian safety and the need for traffic signals, especially with the new hotel that is being proposed and stated that DCTB will need to coordinate closely with NCDOT. Mr. Nettles agreed, noting that a pedestrian signal (like the one at Jockey's Ridge) might be a possibility.

Mr. Nettles confirmed that the lot that was purchased across the street would also be used for overflow parking.

Ms. Harrison questioned if there was really a need for a sporting facility. Mr. Nettles explained that they (OBTB) have a legislative mandate to promote overnight visitation during less than peak months while at the same time meeting the needs of the community. They have heard from many members of the community about the need for an indoor sport complex.

Mr. Nettles confirmed that it will be a challenge to prioritize one use over another and discussed scheduling options.

Mr. Nettles confirmed for Chair Vaughan that they would be hiring a team with expertise in this field to manage the facility.

Mr. Ferguson asked about the Town's involvement with events at the site with. Mr. Nettles stated that they have an application similar to the Town's Crowd Gathering permit and they meet with Town Staff prior to the events to determine any issues (including the need for off-duty police officers).

Mr. Ferguson asked if it was the vision of the Tourist Board for the Outer Banks to become a more year-round community? Mr. Nettles noted that part of the legislation that created the Tourist Bureau was the mandate to promote more overnight visitation during non-peak seasons. Mr. Nettles stated this would provide for a more stable local economy which currently relies on 70% of revenue during three peak months.

Mr. Cafferty noted that they are in the midst of a long-range tourism plan. They sent out a survey to the community and over 4000 people responded. They are currently conducting focus group meetings and will also be conducting Town Hall type meetings.

Mr. Elder asked if the community will be able to see the results of the survey and inquired about a possible timeline for development of the site. Mr. Nettles stated that beginning in the spring they will be having Town Hall meetings to disseminate information and ask for input. Mr. Nettles stated that if everything lines up, they are looking at about three years.

Mr. Nettle confirmed for Mr. Gwinn that they will send out a link to the website so that the Board and the public at large can keep up with the Long-Range Tourism Management Plan

Action Items
None

Report on Board of Commissioners Actions – December 7th, 2022

Planning Director Kelly Wyatt gave an update on recent Board of Commissioner Actions, of note: Mayor Cahoon announced the Earl Murray Jr Employee of the Year winner as Facilities Maintenance Technician Bruce Erickson. There were two Requests for Public Hearing approved under the Consent agenda: one to consider UDO text amendments re: tree removal regulations and one to consider a reduction of parking spaces at TW's Bait and Tackle; they will move forward to the Commissioner's January meeting. Ms. Jones gave a presentation, and the Board approved a request for changes to the Voluntary Septic Subscription Service Committee to include changing the name to the Septic Health Advisory Committee and new goals. Ms. Wyatt reminded the Planning Board that Megan Lambert is their representative on the Committee. The Board reappointed Gary Ferguson, Kristi Wright, and Molly Harrison to additional three-year terms on the Planning Board. The Board adopted the Beach Nourishment Maintenance Capital Project Ordinance amendment in the amount of an additional $100,000 for the sand relocation program as requested. It was Board consensus that since requirements put in place for COVID have expired, written comments received prior to a Board of Commissioners meeting, not associated with a legislative or quasi-judicial public hearing, will be entered into the meeting minutes but will not be read aloud. Finally, the Board approved the 2023 BOC Meeting Calendar as presented.

Town Updates

None

Discussion Items

<u>Continued 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.</u>

Ms. Wyatt explained that at their November 10, 2022 meeting, the Planning Board received the first of three updates related to the Town's Zoning Map and its consistency with the Town's Comprehensive Land Use Plan, particularly within the Historic Character Area.

The Planning Board's primary focus and discussion centered around the current/existing zoning regulations, possible incompatible land uses and what would result to any nonconforming situations created as a result of any possible rezoning. The Planning Board also expressed interest in having more information on what protections could be in place for Historic Cottage Row.

Ms. Wyatt noted that since the Planning Board last met, staff developed additional materials for discussion and consideration. Additionally, staff met with several property owners located in and around the area Historic Character Area. When meeting with property owners within the Historic Cottage Row area, they conveyed strong support for having their properties rezoned from a commercial designation to a residential designation.

Staff also met with numerous property owners within the Old Nags Head Place Subdivision. It was the consensus among the attendees at that meeting that the Planning Board and Board of Commissioners give consideration to rezoning their properties and the neighboring properties from a commercial designation to a residential designation. Specifically, they were interested in the R-3, High Density Residential Zoning District, given that the area has been developed to the R-3 dimensional standards, despite it being zoned a mixture of R-3, High Density Residential, CR Commercial Residential and C-2, Commercial Services.

Ms. Wyatt then proceeded to review the attachments that were included in the Board's agenda packet.

Attachment A includes relevant excerpts from the Unified Development Ordinance related to the C-1, Neighborhood Commercial Zoning District. As has been previously noted, this district has been established within the UDO but to date it has not been mapped within the Town. Ms. Wyatt noted that when reviewing the Historic Character Area and the intent of the C-1 District the Board may find mapping this district to be useful.

Attachment B outlines the uses that are currently allowed within the C-1 District. Ms. Wyatt noted that should the Planning Board recommend that any portion of the moratorium area be rezoned to C-1, it will be imperative to review this table closely. Staff would request that the Planning Board discuss any uses they would recommend removing from the district and likewise, any uses they would recommend adding to the district.

Attachment C can be used to compare the dimensional standards required by each district. Of note, the dimensional standards of the C-1 District and the C-2, General Commercial Zoning District are the same. The existing zoning within the area of the moratorium is C-2. Ms. Wyatt noted that should the Planning Board consider making a recommendation of rezoning to C-1, Neighborhood Commercial, it's important to know that the dimensional standards such as lot area, lot width, setbacks and lot coverage would not differ from one district to another. The difference would be in the permitted uses.

Attachment D is a chart compiled by staff listing all the commercial businesses located within the Historic Character Area and whether the use would be permitted within the C-1, C- 2, and/or residential districts. With building size being limited to 10,000 square feet within the C-1 District, Staff also noted whether the existing building conforms to the area limitations of the C-1, Commercial Neighborhood District.

Attachment E is a series of three (3) maps for the Board to consider: The existing zoning map and two rezoning options.

Attachment F is a copy of the relevant portions of Article 5 of the UDO as it pertains to the creation of nonconformities, what restrictions are imposed and what may be undertaken by any use or structure made nonconforming by any proposed rezoning. Ms. Wyatt noted that at their last meeting, some Board members had inquired about the creation of non-conformities. Ms. Wyatt explained that if part of this creates a non-conforming structure (or use), for zoning purposes not much changes, you can keep it, maintain it, repair it, etc. you just can't increase the degree of non-conformity.

Ms. Wyatt confirmed for Mr. Gwinn that when it comes to a non-conforming use, if the use ceases to operate for one year then it can't come back.

Ms. Wyatt then proceeded to review the maps (Attachment E) in further detail. These include:

• Existing Zoning Map. This map shows the existing zoning designations within the area of the moratorium.
• Option 1. This option depicts rezoning the entire area of the moratorium to C-1, Neighborhood Commercial.
• Option 2. This option depicts the combination of rezoning the area of the moratorium to C-1, Neighborhood Commercial and R-3, High Density Residential. At this time, staff believes this option demonstrates the most compatibility with the policies and goals of the Historic Character Area and the Neighborhoods Character Area.

Mr. Ferguson inquired and expressed concern if Option 2 would be considered "spot zoning". Ms. Wyatt explained that Staff did not feel any the recommendations would constitute spot zoning. Ms. Wyatt noted that she has always understood that a minimum of five acres is a fairly standard size for a zoning district. Town Manager Andy Garman noted that any areas to be rezoned would be a minimum of 5 acres and there are other districts around Town of similar size.

Ms. Harrison inquired about option 2, asking how those areas were chosen to be R3 vs.R1. Ms. Wyatt explained that they went with R3 based upon the size of the lots (predominantly 15000 SF) and having more consistency with side yard setbacks required by the R3. Ms. Wyatt noted that residential uses in the C2 must meet the R3 so any lots that have already been developed in these areas already meet the standards of the R3.

Ms. Wyatt confirmed for Ms. Harrison that the Dormitory use (student housing) would not be allowed in the R3 zoning district so that would potentially become non-conforming.

Ms. Wyatt confirmed for Mr. Ferguson that Multi-family use is allowed in the C1 but not in the R3 District.

Mr. Elder inquired as to the degree of non-conformity that would be created if some of these larger properties were rezoned.

Ms. Wyatt noted that Surfside Plaza & Kitty Hawk Kites would be use and building size non-conforming if they were rezoned. The fueling stations would be use non-compliant but building size would be ok; Ms. Wyatt noted that nothing would change for them unless they wanted to expand.

Mr. Ferguson stated that he wants the Board to look towards the future, be proactive and prevent businesses from becoming non-conforming in the future. When looking at uses they need to strike those that are incompatible with the surrounding properties. Mr. Ferguson also noted that the Board needs to be careful about creating use non-conformities.

Mr. Elder agreed stating that they are looking backwards and forward at the same time and inquired about the ability of non-conforming properties to redevelop. Ms. Wyatt reminded the Board that if a non-conforming use ceases for a year it can't come back, and Zoning eliminated the 50% rule for nonconforming structures several years ago however they would still have to comply with CAMA and FEMA 50% rules.

Ms. Wyatt confirmed for Chair Vaughan that she has not heard from any of the property owners that might potentially become non-conforming, but she and Mr. Garman do plan on making contact with them as they move forward.

Mr. Elder suggested polling the Board to see which way they were leaning, noting that he personally liked Option 2.

Ms. Wyatt confirmed for Mr. Gwinn that the only thing represented in Options 1 and 2 is the area within the moratorium, so it's just the area between the highways from Hollowell Street to Danube Street.

Mr. Ferguson stated he supports the C1 concept but would like them to really look at the allowable uses.

Ms. Wyatt stated that the next step will be looking closer at the C1 District and deciding what uses are compatible and which ones aren't.

Chair Vaughan stated that she supports Option 2, noting that she strongly supports small, locally owned businesses on the beach road.

After some clarification, Ms. Wright stated that she was also in support of Option 2.

Mr. Gwinn noted that Option 2 makes the most sense, however he is concerned about the impact on existing uses becoming non-conforming and the possible impact to the business owners.

Ms. Harrison agreed, stating that she was leaning towards Option 2 but was not interested in limiting small business on the beach road.

Ms. Wyatt stated that something the Board may want to consider is leaving C1 as is, and instead creating a new district, for example a C5.

Mr. Ferguson inquired about the idea of an Overlay District for the moratorium area. Ms. Wyatt noted that the area is so varied she would be concerned about creating an overlay that addresses every concern. Ms. Wyatt also confirmed that there is currently no overlay that protects the architecture of the Historic Character Area.

<u>Planning & Development Directors Report, December 2nd, 2022.</u>

Ms. Wyatt discussed her Director's Report to the Board which included:

An update on BOA hearings – there were no meetings in November or December, however the Board will be hearing an appeal on January 12th, 2023 as Woda Cooper has appealed the UDO Administrator's decision as it pertains to the moratorium (Ms. Wyatt stated that Town Manager Andy Garman would be speaking further on this topic at the end of her report). An update on what is now the Septic Health Advisory Committee. Estuarine Shoreline Management Plan - a project scoping meeting was held on December 23, 2022 with multiple permitting agencies the purpose of which was to discuss the proposed overall project and provide environmental permitting and regulatory information which will improve communications and the overall permitting process. NC Resilient Coastal Communities Program – An agency scoping meeting was conducted on Monday November 28, 2022 to review the dune infiltration concept proposal. On a separate but related subject, Ms. Wyatt noted that water level data loggers have been purchased by the Town's consultant and are scheduled for installation in the upcoming week. Electric Vehicle Action Plan – Staff is looking into securing funding opportunities for an EV Charger at Town Hall. Whalebone Park: Phase 1 Planning – Staff is moving forward with the accessible restroom design and is currently preparing a scope of work. Other updates included status reports on Whalebone Park: Phase 1 Planning, the Dune Management Cost Share Program and Dowdy Park Holiday Events.

Town Manager Andy Garman discussed the Planning Board's most recent discussion on the Historic Character Area and the possible rezoning. Mr. Garman explained that the current moratorium has resulted in a lot of conversation about the Town's zoning, the Historic Character Area and what the Town would like to see as far as uses and developing appropriate standards for that area. As part of this, they would like to determine whether multi-family use is appropriate for that area.

Mr. Garman noted that there have been ongoing discussions with regards to workforce and affordable housing. This ties in directly to the multi-family use in various parts of the Town and what the Town can do to support housing efforts in ways that are appropriate for the Town. The Town needs to define what "affordable" means and develop standards for multi-family use as they are currently too broad. As such they would like to eliminate the use from the C-2 zoning district until standards are better defined. Staff has prepared an ordinance that would strike multi-family from the C2 as Staff believes that currently, as written, multi-family use in the C2 is not consistent with the Comprehensive Plan.

Staff would like to begin the process to review the use and come up with standards that are appropriate within the Town. Mr. Garman would like to begin and complete the review and analysis in the first half of 2023.

Mr. Elder agreed, stating that it seemed like a pragmatic thing to do.

Ms. Harrison noted that this will give the Town time to develop standards the Town would like to see.

Mr. Ferguson inquired as to how many multi-family dwellings currently exist in the Town. Mr. Garman was unsure of the number but noted that except for the Sugar Creek Condos, the majority of multi-family dwellings were built years ago on the oceanfront.

David Elder moved to initiate and recommend approval of a text amendment to eliminate the multi-family use from the C2 Zoning District. Kristi Wright seconded, and the motion passed unanimously.

Request that the Planning Board initiate a Text Amendment as it pertains to the definition of dwelling unit, what constitutes a dwelling unit and to clarify language related to accessory structures and uses.

Ms. Wyatt explained that this issue was spurred by a review of a recently received application. Upon review, Staff realized that the definition of a dwelling unit is inconsistent with what actually occurs. Currently the Town allows one principal dwelling on a lot. Dwelling unit is defined as a "single unit providing complete independent living facilities for one or more persons including permanent provisions for living, sleeping, cooking, eating and sanitation". Ms. Wyatt noted that this would be the principal building; but in addition, the Town does allow people to have an accessory structure. An accessory structure would be detached from the primary structure and that accessory structure can have habitable space, but it cannot be a dwelling unit.

Ms. Wyatt noted that Staff is seeing a lot of detached units that have living and sleeping quarters (bedroom & bathroom) and a wet bar with refrigerator, hot plate, air fryer, etc. but no stove. So, the way the definition is written – "permanent eating facilities" is not clear and leaves room for interpretation. In addition, with the way the ordinance is written there is no limit to how many accessory structures you can have on a site as long as you meet the allowable lot coverage.

Based on the above Staff would like to begin the process to clarify the definitions and the language related to accessory structures and uses and is requesting the Planning Board to initiate the Text Amendment Process.

Ms. Wyatt confirmed for Ms. Wright that there are provisions in the code for medical/elder care accessory structures – "granny pods", but these are considered temporary structures.

Chair Vaughan agreed that it was a good idea, the definition should be updated.

After a brief discussion the Board reached consensus to initiate the text amendment

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