
**Town of Nags Head
Planning Board
April 18, 2023**

The Planning Board of the Town of Nags Head met on Tuesday, April 18, 2023, in the Board Room at the Nags Head Municipal Complex.

Planning Chair Megan Vaughan called the meeting to order at 9:05 a.m. as a quorum was present.

Members Present

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

Members Absent

None

Others Present

Kelly Wyatt, Kate Jones, Andy Garman, Lily Nieberding

Approval of Agenda

David Elder moved to approve the agenda. Meade Gwinn seconded, and the motion passed by unanimous vote.

Public Comment/Audience Response

None

Approval of Minutes

Chair Vaughan asked for a motion to approve the minutes of the March 21, 2023, meeting. David Elder moved to approve the minutes as presented; Meade Gwinn seconded, and the motion passed unanimously.

Action Items

Consideration Of A Major Site Plan Review/Site Plan Amendment submitted by Quible & Associates, P.C. on behalf of The Outer Banks Hospital, Inc. for construction of additional parking at 4917 S. Croatan Highway, Nags Head.

Planning Director Kelly Wyatt presented a Major Site Plan Review/Site Plan Amendment submitted by Quible & Associates, P.C. on behalf of The Outer Banks Hospital for the purpose of constructing eight additional parking area at their property located at 4917 S. Croatan Highway.

The property to the south is being developed commercially and will be the new Cancer Center.

The existing land use of the property is Multi-Use and the property is zoned SPD-C, Village Hotel District. Bluewater Ear Nose and Throat as well as other medical offices are currently located in this building.

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, there are no structures associated with this request.

Ms. Wyatt proceeded to review the applicable Zoning Regulations:

- The scope of work associated with this request requires it to be considered as a Major Site Plan review.
- Allowable lot coverage within the SPD-C Village Hotel District is as follows: Building Area shall not exceed 25%, Parking Area shall not exceed 45%, and a minimum of 30% of the lot shall be kept in undisturbed and landscaped areas. The lot coverage associated with the building area is unchanged at 18%, the lot coverage associated with the parking area is proposed to increase from 41% to 43% and still compliant, and the landscaped area would be reduced from 41% to 38% and still compliant.
- Height and Architectural Design: The proposed request for expansion of the parking lot does not necessitate any revisions to these elements.
- Pursuant to Article 10, Table 10-2, Required Parking by Use, existing onsite parking is adequate for the office uses currently occurring on this site. The applicant is proposing eight (8) additional parking spaces, for a total of 70 parking spaces including four (4) ADA parking spaces. Section 10.92.14.4 of the UDO, Surface Materials, requires a minimum of twenty (20) percent of the surface area of the parking area and drive aisles to be constructed of permeable surface material. This site was designed prior to this code requirement, however all eight (8) of the proposed new parking spaces are being constructed in a permeable surface.
- The proposed parking lot expansion does not necessitate additional buffering/landscaping. The applicant has agreed to assess the existing required 20' wide landscape buffer adjacent to NC 12 and provide supplemental plant material as needed.
- No additional lighting is being proposed as part of this request.
- No additional signage is being proposed at this time.

This property is located within the SPD-C Village at Nags Head District and is serviced by Carolina Water. The proposed parking addition does not necessitate Carolina Water approval as no use is being changed or expanded.

Traffic circulation and Stormwater Management have been reviewed and approved by the Town Engineer as proposed.

The project will be required to comply with all applicable NC Fire Prevention Code requirements as part of building permit application review and issuance.

The Public Works Director has reviewed and approved the proposed site plan as presented.

Staff finds that the proposal is consistent with the applicable use and development standards, as well as relevant land use policies.

Ms. Wyatt noted that based upon their review Staff would recommend approval of the Major Site Plan Review as presented. Ms. Wyatt stated that she as well as members of the Outer Banks Hospital and Quible & Associates were available to answer any questions for the Board.

Ms. Wyatt presented the proposed site plan and confirmed for Chair Vaughan that they were not required to increase the landscape buffer but she did ask them to assess the existing buffer and supplement it if needed.

Amy Montgomery, Sr. Administrator of Operations for the Outer Banks Hospital briefly addressed the Board. Ms. Montgomery stated that there are apartments on the second floor above the medical offices. They are planning to use the additional parking spaces for their traveling medical providers who will be staying in that building. They are thinking that the parking spaces will be delineated as staff parking.

There being no further discussion, David Elder moved to approve the Major Site Plan Review/Site Plan Amendment as submitted. Megan Lambert seconded, and the motion passed unanimously.

Consideration of Text Amendments to the Unified Development Ordinance as it pertains to the supplemental regulations associated with "Fueling Stations" within the town.

Ms. Wyatt explained that as part of the amendments to the Unified Development Ordinance as it relates to the Historic Character Area, the Board of Commissioners adopted revisions to Section 7.20, Supplemental Regulations for Fueling Stations. This adopted amendment applied only to fueling stations located within the C-5, Historic Character Commercial Zoning District. At that time, during their March 15, 2023, mid-month meeting, members of the Board of Commissioners expressed an interest in considering these same regulations be applied to fueling stations throughout the Town. Ms. Wyatt noted that the use of "Fueling Station" is currently permitted via the Special Use Permit process with supplemental regulations within the C-2, General Commercial Zoning District and the C-5, Historic Character Commercial Zoning District.

Staff conducted an analysis of the existing fueling stations and convenience stores within the town as part of the Historic Character Area amendments:

- 7-Eleven at 3,643 S. Croatan Highway – 3,142 square feet w/ 4 dispensers.
- Duck Thru at 4201 S. Croatan Highway – 1,200 square feet w/ 4 dispensers.
- Wally's at Whalebone - 7309 SVDT – 1,376 square feet w/ 2 dispensers.
- QP at 7506 SVDT – 1,208 square feet w/ 3 dispensers.
- Sunoco/Valero at 7603 SVDT – 4,292 square feet w/ 3 pumps (Convenience Store approx. 2,850 square feet, residential above)

Ms. Harrison asked that the Shell Station/Duck Thru at Lakeside be included on the list. Ms. Wyatt agreed and pulled it up on the Dare County GIS noting that it was a little over 1000 square feet with approximately 4 dispensers.

Additionally, as part of the recently adopted Historic Character Area amendments, definitions for "Convenience Store" and "Fueling Station" were adopted. Ms. Wyatt reviewed these definitions for the Board:

Convenience Store means a retail store that provides the public with a convenient location to purchase a variety of primarily packaged consumable products, generally food, beverages, and other household supplies. A convenience store is often found in conjunction with a fueling station.

Fueling Station means retail place of business operated for the purpose of storing and dispensing motor vehicle fuel to the general public.

If adopted, the proposed amendment would: limit the fueling station use to having no more than four (4) fueling dispensers, preclude any new development of a fueling station on a lot that has frontage on NC 12, and, if a convenience store is associated with the fueling station, it cannot exceed 3,500 square feet of habitable building area.

Ms. Wyatt acknowledged that this language would create a site nonconformity for the existing fueling station located at 7309 S. Virginia Dare Trail (Wally's), however, should this ordinance be adopted, nothing in this language would preclude this business from continuing to operate in its current configuration and design. Furthermore, both site and structure additions and/or expansions may be permitted so long as the degree of any nonconformity is not increased.

Mr. Gwinn inquired if that would include the addition of an Electrical Vehicle Charging Station and whether it would be considered a fueling site.

Chair Vaughan agreed that it is something the Board needs to think about because at some point there may be a need for more electric charging stations than fueling stations.

Ms. Wyatt noted that currently EV Charging Stations are permitted as an accessory use to most every use so there would be nothing about the proposed text amendment that would preclude an EV Charging Station at any fueling station.

Ms. Wyatt confirmed for Mr. Elder that EV Charging Stations and Fueling Stations are two very distinct uses that are treated differently in the code so Staff would not consider an EV Charging Station the same as a fueling station.

Ms. Wyatt explained that the proposed text amendment would ensure that only fueling stations of a specific size, scale, and character could be constructed within the town, noting that fueling stations with larger convenience store area and numerous fueling dispensers do not meet the values and the desired aesthetic of the Town of Nags Head as noted in the Comprehensive Land Use Plan:

- Buildings with a residential scale and appearance with low heights and small footprints that are designed to reflect the heritage of Nags Head.
- Commercial development that serves the needs of residents and visitors but respects the goals of the community related to design and appearance.

Ms. Wyatt reviewed the draft amendment briefly for the Board.

Ms. Harrison and Mr. Ferguson both stated that they were in support of the amendment with Mr. Ferguson stating that he could find no reason to not recommend approval.

Ms. Wyatt confirmed for Mr. Ferguson that in the case of the 7-Eleven, when that site was redeveloped from what used to be a garage, they used the existing exits/entrances that were already there from the previous use; if a new station were to be built Staff would not recommend dual entrances from US 158 and NC 12.

There being no concerns or further discussion, David Elder moved to recommend approval of the text amendments as submitted. Meade Gwinn seconded, and the motion passed unanimously.

Report on Board of Commissioners Actions – April 5th, 2023

Ms. Wyatt gave an update on the Board of Commissioner Actions, of note: there were three Requests for Public Hearing on the consent agenda – the Zoning Map amendment re: C-5 Historic Character Commercial (Mayor Cahoon confirmed that the Public Hearing for the zoning map amendment is scheduled for the May 3rd Board meeting), the Site Plan Amendment for Nags Head Church for parking lot expansion (the Board asked Staff to reach out to NC DOT about doing an impact analysis on traffic on Soundside Road) and one to consider UDO text amendments re: short-term rental registration. With regards to the Public Hearing to consider a text amendment to the UDO as it pertains to the definition of “Habitable Building Area” – Board members agreed with Ms. Wyatt’s suggestion to make additional modifications for review by the Planning Board and to table the proposed text amendment. Finally, Commissioner Cahoon asked that staff review the lighting standards as they relate to the newer lighting technology.

Ms. Wyatt confirmed for Mr. Ferguson that she did not believe there would be a charge for the traffic study and definitely not to the church as the Town is the one requesting it.

Town Updates

Chair Vaughan asked for an update on the Epstein Street Bathhouse. Ms. Wyatt stated that they had received only one bid and it was too high (double or more than what it cost to redevelop the Bonnett Street bathhouse). They will be putting it out to bid again now that prices for materials have gone down with the hope to start work on it in the Fall. Mr. Elder asked that the Town look into adding ramps to the beach accesses for ADA access; Mr. Elder noted that having ramps and mats would also make the accesses easier to maintain. Ms. Wyatt confirmed that while the building was designed to provide some housing on the second level it is not being finished out (made habitable) at this time. Town Manager Andy Garman addressed the Board and explained that the Board (of Commissioners) is looking at and have been discussing the future needs of the Town including housing for Ocean Rescue and a possible joint facility with Nags Head Fire and Dare County EMS so at this time they did not feel that developing part of the bathhouse for housing was worth the value considering the cost.

Discussion Items

Discussion Of Revised Text Amendments to the Unified Development Ordinance as it pertains to the definition of "Habitable Building Area".

At the Planning Board’s February 21, 2023 meeting, staff requested that they both initiate and make a recommendation on a proposed text amendment to the Unified Development Ordinance (UDO) to clarify how the terms “Habitable Building Area” and “Habitable Living Space” are applied.

These two terms are utilized within the Unified Development Ordinance when regulating commercial design, large residential dwellings, and delineating building area limitations within the Flood Damage Prevention Ordinance.

The existing UDO has a definition for “Habitable Building Area”, however, the word “finished space” is not currently defined and thus has been left open to interpretation. Likewise, there is no definition provided for “Habitable Living Space”, which has allowed this terminology to be left open to interpretation as well.

At that meeting the Planning Board voted unanimously to recommend adoption of the proposed amendment to the Unified Development Ordinance as presented.

Ms. Wyatt explained that Staff presented this proposed text amendment to the Board of Commissioners for their consideration at their April 5th, 2023 meeting. Hearing concerns with the proposed draft language, it was suggested by Staff, and was the consensus of the Commissioners that Staff revisit this item with the Planning Board and give additional consideration to potential negative impacts this language may have to existing, conforming developments within the town, as well as any potential unintended consequences that may result if adopted.

Ms. Wyatt reminded the Board that the UDO places a maximum area of habitable living space for dwellings based upon total lot area. Dwellings constructed on parcels that are 16,000 square feet in area or greater shall not exceed 5,000 square feet of habitable living space. However, dwellings constructed on a parcel less than 16,000 square feet in total lot area shall not exceed 3,500 square feet of habitable living space. There are also maximum habitable building area criteria applied to commercial buildings.

Some of the questions that came up at the BOC meeting include:

- How does this language affect garage spaces within the town, as many garages may have both insulation and drywall, but not conditioned.
- Should an exemption for a maximum two-car garage be proposed so this finished space does not count as habitable building area (maximum 3,500 square feet or 5,000 square feet depending on lot size).
- How would such an exemption affect the application of the Flood Damage Prevention Ordinance in AE and VE Flood Zones?
- How should we view and regulate enclosed spaces/rooms within an existing structure labeled "storage" if these areas are finished and/or conditioned? Historically, conditioned storage areas have been considered as habitable building areas for zoning purposes. However, Ms. Wyatt noted that in speaking with the Building Inspector, the NC Residential Code does not consider a storage area as a habitable building area. This also applies to areas such as laundry rooms.

Ms. Wyatt confirmed for Mr. Ferguson that in this scenario the zoning definition would take precedence over the Building Code definition.

- To what extent should the Town offer exclusions of spaces from the maximum habitable building area/habitable living space requirements. Applying these standards regulates the volume, size, and appearance of structures within the town. How these standards are applied and what exclusions may be offered could have an impact on the volume of structures we see within the town. An example would be a dwelling that has the maximum 5,000 square feet of habitable living space, however, has other enclosed rooms within the structure that do not meet the definition of "finished" or "conditioned", thus excluding them from habitable building area/habitable living space, but has a volume much larger than 5,000 square feet and does not visually meet the size and appearance of desired structures within the town.

Ms. Wyatt proceeded to review for the Board some possible proposed definitions:

"Habitable Building Area" and "Habitable Living Space" means finished space or conditioned space in an enclosed portion of a building.

"Finished Space" means an enclosed area with finished walls and ceilings, regardless of conditioning.

"Conditioned Space" means an area within a building where the temperature and/or humidity are controlled.

In addition, a maximum of 400 square feet of unconditioned finished space at grade level with concrete floors, at least one roll-up or overhead door with a minimum width of 8 feet, and a room

width of at least 18 feet perpendicular to the door, may be excluded from "Habitable Building Area" or "Habitable Living Space".

Ms. Wyatt also discussed with the Board as to how these standards would impact construction within the AE and VE flood zones.

The Board discussed insulation and how that fits in to the definition of finished or unfinished space; insulation shows an intent to regulate temperature and create potential habitable space.

Ms. Wyatt confirmed for Mr. Elder that in the Flood Ordinance there is a non-conversion agreement requirement so those that build storage below base flood less than 300 SF must file a non-conversion agreement.

Ms. Wyatt confirmed for Mr. Gwinn that the purpose of this discussion was to limit the size of a structure that can be built on a lot.

Mr. Gwinn stated that "if you give somebody an opening, they are going to take it" and suggested that they just set a maximum square footage regardless of habitable vs. non-habitable space.

Ms. Wyatt noted that Staff had discussed having gross floor area not to exceed 3500 SF or 5000 SF depending on lot size and still have the exception for garages (400 SF).

Ms. Lambert stated that she liked the idea because "it was a little more cut and dry and accomplishes the task while also leaving less wiggle room for possible conversion".

Ms. Wyatt confirmed for Mr. Ferguson that setbacks and height requirements are used in conjunction with lot area to determine the maximum habitable space. Mr. Garman noted that the Town adopted the maximum habitable space requirements in 2003.

Ms. Wyatt stated that for the next meeting she will bring this item back in ordinance form with some examples of previously permitted new single-family dwellings.

Continued Discussion of Potential Text Amendments related to the definition of dwelling unit, what constitutes a dwelling unit and to clarify language related to accessory structures and uses.

Ms. Wyatt reviewed for the Board the text amendment that staff proposed back in 2019 which was ultimately voted down by the Board of Commissioners. Ms. Wyatt also reviewed the proposed definition of an Accessory Dwelling Unit.

Ms. Wyatt confirmed for Ms. Lambert that what was proposed and voted on in 2019 was town wide.

Ms. Wyatt then discussed proposed legislation currently under consideration that would limit the Town's ability to regulate or prohibit accessory dwelling units.

Mr. Gwinn noted that one of the things that will help regulate ADUs is septic capacity. Mr. Elder agreed that this would help regulate them to a certain extent unless they are willing to go with the greater expenditure of an engineered septic system; advancing technology of septic systems will determine future construction.

Ms. Wyatt confirmed for Chair Vaughan that they might be able to come up with a way to incentivize ADUs in a way to encourage property owners to have them for long-term rather than short-term rentals but of course the Town Attorney would need to weigh in.

Mr. Elder suggested that they might want to look at impact fees/facility fees and how much the Town has spent to maintain the current level of housing.

Mr. Ferguson inquired about the Town's ability to require employee housing as part of commercial development. Ms. Wyatt stated that they currently incentivize commercial to have residential on top to house employees with things such as reduced parking standards; administrative approval, etc. but there is nothing in the code that mandates it, and she is not sure that they could legally do that.

The Board was in general consensus that if the legislation does not pass, they would like the Town to move forward and allow ADUs with incentives for long-term housing.

At their next meeting the Board will continue their discussion with specific focus on whether they want to see them all over town or just in certain zoning districts.

March 29th, 2023, Director's Report

Ms. Wyatt briefly discussed her Director's Report with the Board.

Deputy Planning Director Kate Jones gave an update on the upgrades to the Nags Head Dog Park, the Septic Health Advisory Committee and the Estuarine Shoreline Management Plan.

Planning Board Members' Agenda

None

Planning Board Chairman's Agenda

None

Adjournment

A motion to adjourn was made by David Elder. The time was 11:02 AM.

Respectfully submitted,
Lily Campos Nieberding