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

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

Planning Board Vice Chair Megan Lambert called the meeting to order at 9:02 a.m. as a quorum was present.

Members Present

Megan Lambert, Molly Harrison, Gary Ferguson, Kristi Wright, David Elder

Members Absent

Megan Vaughan, Meade Gwinn

Others Present

Kelly Wyatt, Lily Nieberding, Fire Chief Randy Wells, Deputy Fire Chief Shane Hite

Approval of Agenda

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

Public Comment/Audience Response

None

Approval of Minutes

Vice Chair Lambert asked for a motion to approve the minutes of the June 20, 2023, meeting. David Elder moved to approve the minutes as presented; Kristi Wright seconded, and the motion passed unanimously.

Action Items

Consideration Of Text Amendments to the Unified Development Ordinance as it pertains to including the use of "Restaurant, Drive Through" as a permissible use within Commercial Mixed-Use Developments, as well as amending the supplemental regulations associated with this use.

Planning Director Kelly Wyatt explained that the applicant has filed a text amendment to the Unified Development Ordinance that is running concurrently with the Special Use/Site Plan Amendment application (next agenda item). If adopted the text amendment would amend the UDO to permit Drive-Through Restaurants within Commercial Mixed-Use designations. Any recommendation of approval of the proposed Special Use /Site Plan Amendment will be predicated/conditioned upon the adoption of the requested text amendment.

Ms. Wyatt then proceeded to present text amendments to the Unified Development Ordinance submitted by Attorney Robert Hornik, Jr. on behalf of SRE Mustang, LLC (Outlets Nags Head) to amend Section 7.32, General Provisions of the UDO to include the use of "Restaurant, Drive Through" as a permissible use within Commercial Mixed-Use Developments and to amend the Supplemental Regulations associated with drive-through restaurants within the Town.

Ms. Wyatt explained that Section 7.32 specifies the allowable uses to be included as part various types of Commercial Mixed-Use designations. The Commercial Mixed-Use designations include Commercial with Accessory Residential, Group Development, Mixed Use Development, Multiple Principal Uses, and Shopping Center.

Ms. Wyatt further explained that "Restaurant, Drive Through" defined as "an establishment where drive lane facilities are provided for the serving of prepared food, frozen desserts or beverages directly to a customer in a motor vehicle by means which eliminates the need for the customer to exit the motor vehicle" is not included as one of the allowable uses within a Commercial Mixed-Use Development. Ms. Wyatt noted that presently drive-through restaurants are only allowed within the C-2, General Commercial Zoning District.

Ms. Wyatt noted that while text amendment requests are not site specific, it is helpful to understand that this request is being made in an effort to allow development of a Starbucks (drive-through) restaurant within an existing shopping center/group development (Outlets Nags Head). The applicant has chosen to move this text amendment request forward concurrently with the Special Use Permit/Site Plan Amendment for the proposed drive-through restaurant with the knowledge and understanding that any site-specific plan approval is contingent upon the adoption of this text amendment.

In addition to their request to amend Section 7.32, the Applicant has also proposed to amend the supplemental regulations applicable to drive-through restaurants found within Section 7.29 of the UDO:

Restaurant, drive-through, is permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:

7.29.1. In addition to the buffering requirements of Section 10.93, Landscaping, Buffering, and Vegetation Preservation, the site shall be buffered from all adjacent properties utilizing a 10-foot-wide Commercial Transitional Protective Yard as prescribed in Section 10.93. Ms. Wyatt noted that the Applicant had not proposed any changes to this.

7.29.2. The applicant has proposed to change the language to read: drive-through restaurant parcel must be situated "within a retail shopping center development which (a) consists of at least twenty (20) acres of land with frontage on the US 158 right-of-way, (b) has controlled access to and from UD 158, and (c) is located south of Gull Street". In addition, the drive-through restaurant may not have direct vehicular access to UD 158. The Town Board may, in its discretion, approve an alternative site layout with the front of a drive-through restaurant located in the C-2, General Commercial District on US 158 oriented differently (i.e., front façade not facing US 158) as part of the Special Use Permit process.

7.29.3. Where the front façade of the restaurant with drive-through is not oriented toward US Hwy 158, the Town Board may approve such alternative site layout provided that the buffer yard

requirements set forth in Section 10.93 of the UDO are satisfied. The applicant has not proposed any changes to this one.

Ms. Wyatt reminded the Board that at the last meeting she had reviewed some policy considerations based on the 2017 Comprehensive Land Use Plan which sets forth various character areas throughout the Town. These are districts that have their own unique characteristics, have the potential to evolve into unique areas with intentional guidance of future development through planning and implementation, or require special attention due to unique development issues. These areas provide both the vision and policy direction for the desired use, design, infrastructure, and other elements that new development must consider. Within each Character Area the plan references a general list of appropriate land uses within the Character Area. In each of these areas, the list of generally appropriate land uses specifically spells out that "drive-thru restaurants" are not desirable.

Ms. Wyatt explained that as noted throughout the 2017 Comprehensive Land Use Plan, the Town of Nags Head generally has concerns with the development of drive-through restaurants to include their appropriateness within various character areas within the town, including the US Hwy 158 corridor. While a drive-through restaurant designed in conjunction with the development of a new mixed-use project would have significant staff input from the onset, staff submits that numerous concerns may arise as a result of proposing a new drive-through restaurant as part of an existing mixed-use development. Those concerns include but are not limited to conflicts with internal traffic circulation, potential reduction of necessary parking spaces, potential vehicular backups and drive aisle conflicts, and public safety concerns such as obstruction of emergency vehicle and fire lane access.

Based upon the staff analysis above, staff would recommend denial of the proposed text amendment to the Unified Development Ordinance as presented. Ms. Wyatt stated that she was available to answer questions for the Board as well as the Applicants both in person and via zoom.

Ms. Harrison questioned if it was common to have such specific location language spelled out in the UDO? Ms. Wyatt confirmed that there are places in the current ordinance that have very specific language, but it is generally not ideal.

Ms. Wyatt confirmed for Mr. Ferguson that the size of the parcel is about 17-18 acres, 20.3 acres total includes wetlands.

Applicant Bob Hornik with the Brough Law Firm addressed the Board and introduced the other members of the team: Chris Aebel, Project Engineer with the Timmons Group as well as Adam Greenebaum, owner's representative, Tim Doron, Fish Transportation Group, Eugene Thompson, Architect, Ionic Design, and Jacqueline Young, property manager of the outlet mall (all via Zoom).

Mr. Hornik addressed Ms. Harrison's concern, stating that they tried to address the Board's concerns expressed at a previous meeting that there could be more drive-through restaurants to follow if the text amendment were to pass. They made the language more specific in an attempt to narrow the universe of possibilities where drive throughs could happen. Mr. Hornik also noted some of the uses that could go in the outlet mall under the current zoning regulations including a convenience store.

Ms. Wyatt and Mr. Hornik confirmed for the Board that Starbucks was considered to be a drive-through restaurant and not a coffee shop (which does not allow drive-throughs).

Mr. Hornik confirmed for Mr. Elder that he did not see any other conflicts in the UDO if they were to move forward through the process. They are trying to limit unforeseen consequences by editing the language and limiting where that type of use would be allowed.

Ms. Wyatt confirmed for Mr. Ferguson that she had gone through the old records and found that the marsh/wetland area was not dedicated to the Town, but it was placed in an open space easement and recorded; so in perpetuity it's in an easement.

Ms. Harrison noted that is clearly written that we (the Town) don't want drive-through restaurants and asked why would having this one specific one be beneficial for the Town but limit it everywhere else? Why is this one so important that we need to change the UDO to allow them in one specific spot in town?

Mr. Hornik explained that they believe it will add to the community, having a Starbucks; it's a market area that is available and attractive; it is a good location for the business as well as beneficial to the Outlets. Mr. Hornik also noted that it would be better than some other uses that could go on the property such as convenience store or some of the other uses that are currently permitted.

Mr. Elder noted that it seemed like the Applicant had listened to and tried to alleviate their previous concerns but the underlying issues, specifically public safety concerns, were still there. Mr. Elder also expressed concern that if they were to allow it in that location why would they limit it in other areas?

Ms. Lambert agreed with Mr. Elder noting that even though the text amendment wasn't site specific it was specific enough that they need to consider the issue of parking; she understands that the Applicant heard their concerns that they don't want drive-through restaurants everywhere, but they also have to be fair and it's hard to say yes to one spot while saying no to another.

Mr. Elder noted that the Applicants had put a lot of work into this proposal and questioned why? He has heard feedback from the community with concerns related to the levels of occupancy and volume.

Ms. Harrison agreed stating that she also hears a lot of input from the community, people are proud of Nags Head, that we (the Town) hold the line on things and have a UDO that protects us, that we laid out how we want the Town to look. We (the Town) specifically said we didn't want drive-throughs, and for one business to come in and try to pigeonhole it doesn't seem fair to the rest of the town. Ms. Harrison stated that she would not be voting in favor of the proposal.

Mr. Elder noted that it wouldn't be fair to the other businesses that followed the UDO.

Ms. Harrison stated that a lot of people do like Starbucks and might want one in the town but it's making an exception and it would not be consistent with what they've allowed in the past; it would not be fair to existing restaurants who may also have wanted a drive-through and weren't allowed.

Ms. Wyatt confirmed for Mr. Ferguson that when it comes to development, wetlands are counted when looking at density but not when it comes to lot coverage.

Mr. Ferguson stated that he supported staff's recommendation and agreed that what is proposed goes against the Land Use Plan.

There being no further discussion, Molly Harrison moved to follow staff's recommendations and recommend denial of the proposed text amendments. David Elder seconded and the Motion passed unanimously.

Consideration Of a Special Use Permit/Site Plan Amendment submitted by Timmons Group on behalf of Outlets Nags Head, for the construction of a Starbucks Restaurant/Café at 7100 S. Croatan Highway, Nags Head.

Ms. Wyatt explained to the Board that once it comes in front of the Board of Commissioners if they deny the text amendment the BOC would not be hearing the Special Use/Site Plan Amendment. However, if the Commissioners vote to approve the text amendments, then the Special Use Permit would move forward. For that reason, Ms. Wyatt stated that it would be helpful for the Planning Board to go forward with their site plan review.

Ms. Wyatt then presented the Special Use/Site Plan Amendment submitted by SRE Mustang, LLC (Outlets Nags Head) on behalf of Starbucks Restaurant for the purpose of constructing of a 2,460 square foot Starbucks Restaurant/Café with a drive through and outdoor patio located within the existing parking lot for Outlets Nags Head.

The property is located at 7100 S. Croatan Highway, the existing Land Use is Shopping Center/Group Development, and the property is zoned C-2, General Commercial Zoning District. The surrounding properties are also zoned C-2 and are developed commercially. These properties are also part of the Commercial Outdoor Recreation Overlay District and Hotel Overlay District.

While the property is located within the Shaded X and X Flood Zone, per the Town of Nags Head local ordinance, the property is subject to an RFPE/LES of 9 ft. The proposed first floor of habitable space shall be elevated above the 9-foot RFPE. The applicant has shown the finished floor of the proposed Starbucks Restaurant/Café to be at 9 feet, however, no topographical information or existing grade information has been provided to date to determine if elevation of the structure will be necessary in order to meet this requirement.

Ms. Wyatt confirmed for Mr. Ferguson that the building elevation of the existing outlet structures is 7 feet and was compliant when they were built in 1989.

Ms. Wyatt noted that the 2017 Comprehensive Plan Future Land Use Map classifies this property as Waterfront Commercial Recreation, and it is additionally located within the Waterfront Recreation Activity Node. She then proceeded to review the applicable Zoning Regulations:

- Section 6.6, Table of Uses and Activities lists "Shopping Center" as Special Use within the C-2, General Commercial District, with supplemental regulations set forth in Section 7.32. Section 7.32 lists the uses that are permissible within Commercial Mixed-Use designations. As noted earlier, currently, this section of the UDO does not permit the use of Drive-Through Restaurants within Commercial Mixed-Use designations such as Shopping Centers.
- Total allowable lot coverage for this site is 55%. Previous surveys indicate an existing lot coverage of approximately 45%. The applicant has stated that there is no additional proposed coverage associated with this project therefore lot coverage will remain compliant.
- The maximum allowable building height within the Town is 35 feet. The applicant has proposed a structure with an overall height of 22 feet to the top of the parapet wall therefore height is compliant.
- Section 10.82 of the UDO, Applicability, states that Commercial Design Standards shall apply to all building construction or remodeling projects requiring a conditional use permit or site plan review. This project must adhere to the Commercial Design Standards set forth within Part VI of the UDO.

Ms. Wyatt noted that the applicant had elected to provide architectural design compliance through the standards specified in Division II – Building Design.

While many of the required standards have been met such as those included in Building Scale, Building Size and Dimensions, and Building Height, there are several areas of the proposed design that remain noncompliant. Ms. Wyatt reviewed these deficiencies for the Board and noted that at this time, Staff finds that the proposed architectural design does not comply with the requirements of Division II, Building Design of the UDO.

- Pursuant to Article 10, Table 10-2, Required Parking by Use, Shopping Center Use, parking requirements for each use shall be calculated separately. Ms. Wyatt then reviewed these requirements in further detail for the Board:

- General retail shall be parked at one parking space per 250 square feet of gross floor area, plus one parking space for each employee but no less than two employee parking for each retail unit or establishment.
- Outlets contain 81,362 sf of retail space = 326 parking spaces required.
- 22 Units @ 2 employee spaces per unit = 44 parking spaces required.
- Restaurants shall be parked at one space for each 55 square feet of customer service area.
- Bros Brothers Restaurant has 440 sf of CSA = 8 spaces required.
- Tropical Smoothie Café – no information has been provided at this time.

Ms. Wyatt noted that Starbucks contains 2,460 sf gross floor area; however, they have not identified the area within the building that is designated for customer service therefore, they cannot determine the exact amount of required parking. They have allocated 10 spaces for the structure based upon the gross floor area; this would equate to approximately 550 square feet of gross floor area.

There are currently 488 parking spaces onsite. With the proposed development of the Starbucks Restaurant/Café, the applicant has demonstrated that there will be 415 parking spaces remaining. Ms. Wyatt stated that while this technically meets the minimum parking requirements outlined in Section 10.16 of the UDO, staff do not believe that the reduced parking would meet the needs of the site as the shopping center parking during peak periods is at or near 100% occupancy. This is not only evidenced on holidays but more commonly during the peak tourist season on overcast foul weather days.

Section 10.14.6, Minimum Parking Requirements states, "A developer shall evaluate his own needs to determine if they are greater than the minimum specified by this section". As was noted at the Sketch Plan phase of this proposed development, staff from various town departments including Planning & Development, Town Engineer, Fire, and Police believe that a reduction in overall onsite parking is of significant concern. Layering in a drive-through restaurant into the existing shopping center has potential to create vehicular conflicts internal to the site including the staking of vehicles into drive aisles as well as within the primary entrance. Staff also has concerns with traffic backups preventing/obstructing emergency vehicles from moving through the parking lot drive aisles freely.

Ms. Wyatt noted that as part of the revised application submitted for review by the Planning Board, the applicant had provided a parking analysis completed by Fish Transportation Group and has now proposed the addition of 15 parking spaces to be interspersed in areas behind the Outlets. These parking spaces are shown on Sheet SK-1, drawn by Timmons Group, and dated 6/16/2023. However, in review of this proposal, staff found that the site drawing did not accurately reflect the existing improvements located behind the outlets including the fire lane, loading bays/docks and ramps, sheds, trash compactor, dumpster, and the fire department sprinkler connection. Ms. Wyatt stated

that there were memorandums from Town Engineer, David Ryan and Deputy Fire Chief, Shane Hite along with photographs from staff included with her Staff Report. Based upon this information, Staff would recommend that the rear parking space alternative not be accepted as presented. Ms. Wyatt noted that there would be a loss of 73 parking spaces if they don't count the 15 additional proposed spaces.

With regard to the loading zone requirements, Section 10.17.1. sets forth the requirements for the number and type of loading zone required based upon the use. This section also states, "A loading space need not be necessarily a full berth but shall be sufficient to allow normal loading and unloading operations of a kind and magnitude appropriate to the use. The Town Engineer shall determine the sufficiency of loading space but in no case shall the use of such space hinder the free movement of vehicles and pedestrians over a street, sidewalk, parking lot or alley". No justification or supplemental information has been provided by the applicant indicating the type, size, schedule, and frequency of loading operations.

In addition, Ms. Wyatt noted that 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. The applicant has not shown any of the newly designed parking area to be provided in a permeable surface material.

- Several sections of the Unified Development Ordinance speak to Buffering and Landscaping as it applies throughout this proposed site:
 - Section 10.93.3.7 of the UDO, Interior Parking Lot Landscaping, requires parking lot landscaping be provided at a minimum rate equal to ten percent of the total area of the parking spaces. The minimum area necessary for compliance is approximately 1,000 square feet of vegetation. Sheet SK-1 by Timmons Group dated 7/7/23 shows upwards of 12,000 square feet of green space. Staff feel comfortable that the applicant will meet and exceed this requirement for compliance.
- A lighting plan compliant with the requirements of Article 10, Part IV of the Unified Development Ordinance will be required prior to the issuance of any development permits. In addition, a light audit will be required prior to issuance of occupancy permits.
- No additional signage is being proposed at this time. Any proposed signage must be reviewed and approved prior to installation.

The applicant has provided information from a licensed professional engineer that there is available capacity for the Starbucks Restaurant to tie-in to the wastewater treatment plan, this was included in the Board Packet.

The Town Engineer, Fire Department, Police Department and the Planning and Development Department all have significant concerns traffic circulation and the potential conflicts created by layering a drive-through restaurant into an existing shopping center parking area. Ms. Wyatt asked that the Board refer to the memo provided by Deputy Fire Chief, Shane Hite dated July 13, 2023, and the memo from Town Engineer, David Ryan dated July 13, 2023 both of which were included in the Board's agenda packet.

Ms. Wyatt noted that the memo provided by Town Engineer, David Ryan dated July 13, 2023 also addresses Stormwater Management; it appears that there's no lot coverage being added so unless fill is proposed there should be no issues there.

The memo provided by Deputy Fire Chief, Shane Hite dated July 13, 2023, not only addresses traffic circulation but other items for Fire approval.

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

Noting first and foremost that the text amendment to permit the use of drive-through restaurants within Commercial Mixed-Use designations such as shopping centers must first be adopted, Staff finds that this proposal is inconsistent with the applicable use and development standards, as well as the land use policies. Ms. Wyatt stated that based upon Staff's review of the proposal, the deficiencies noted within the staff report, and the concerns related to internal traffic circulation, Staff would recommend denial of the Special Use/Site Plan Review as presented.

Ms. Wyatt presented the proposed site plan for the Board so they could have a visual of what they were discussing. Ms. Wyatt also pulled up an aerial of the property with some pictometry showing the back side of the property and the improvements that were not shown on the site plan as well as photos showing delivery vehicles blocking the fire lane. Ms. Wyatt reviewed a few other site plans as well as some elevations for the Board.

Ms. Wyatt confirmed that Staff has not yet received any revisions if there have been any since Tuesday; however architectural design is one of many concerns so even if they were addressed today, it would not change Staff's recommendation.

Ms. Wyatt confirmed for the Board that she had researched the older permit files and found nothing that limited the Outlets hours of operation to 10:00 AM. They could open earlier if they made the decision to do so.

Deputy Fire Chief Shane Hite addressed the Board and discussed his concerns as they relate to Public Safety and access, especially the issues with the Fire Lane and reduction of parking spaces. Mr. Hite also expressed concerns about the traffic study, stating that one week in June was not a good representation of what it can be like, in the height of the summer season. Mr. Hite also noted concerns related to pedestrian access, noting that the FD has been out to the outlet mall over 60 times in the past five years for various reasons.

Mr. Hite confirmed for Mr. Elder and the Board that the site is very busy in times of inclement weather (since they can't go to the beach many people go shopping). Coupled with limited visibility, increased call volume, confusion if there is an actual emergency and limited access, things can get worse quickly and it is something that they have to really worry about.

Mr. Hornik, on behalf of the Applicant, addressed the Board and spoke in further detail with regard to the Flood Elevation and Architectural concerns. Mr. Hornik reiterated for the Board that they meet the parking requirements that are required by the UDO, however, they tried to address the Board's concern related to parking and tried to come up with an option to add 15 more spaces in the back. Mr. Hornik stated that these additional 15 spaces were intended to be used for employee parking. Mr. Hornik also noted that Tim Doron who did the traffic study could speak further about traffic patterns. Mr. Hornik stated that they had heard the concerns from the Board and were trying to be responsive and address them.

Chris Aebel with Timmons group was next to address the Board. Mr. Aebel addressed some of the issues raised by the site plan and stated that he understood the concerns, noting they can provide additional crosswalks or other features for easier pedestrian access. With regards to the 15 proposed

parking spaces, they had Ms. Young (Outlet Mall Manager) survey what was in the back of the property and came up with the location of spaces accordingly.

Ms. Harrison inquired how the outlets planned to enforce that the parking in the back of the property be used by the Starbucks employees on inclement weather days?

Jacqueline Young, Outlet Mall Manager, addressed Ms. Harrison's concern via Zoom. She explained that the additional fifteen parking spots would be for the use of all outlet mall Employees, not just Starbucks and confirmed that they do enforce the employee parking regulations.

Tim Doron with the Fish Transportation Group confirmed for Ms. Lambert that they had done traffic studies in other resort areas including Sea Pines (Hilton Head, SC) but not the Outer Banks.

Mr. Aebel noted that because of the way that Stormwater flows (from the back of the property towards the highway) they had already planned to elevate the building and collect the runoff as it comes across the drive aisle and pipe it so that it goes around the building and connects to the existing outfall points.

Ms. Wyatt confirmed for Mr. Ferguson that even without the 15 parking spots in the back the applicant does meet the minimum parking requirements. Ms. Wyatt also confirmed that if they were to need a variance it would have to go through the Board of Commissioners.

Mr. Doron spoke to the parking issue noting that he has been doing parking studies for shopping centers for many years. Mr. Doron stated that the busiest time for Starbucks would be before the outlet mall opens for business.

Mr. Doron confirmed for Mr. Ferguson that the Trip Generation Rate for a Starbucks Drive-Through is about 80 visits an hour and 60% of their business is Drive-thru not park and sit in.

Mr. Doron noted that if this were a convenience store, for example, it would need to be parked and that would create a bigger parking issue as a convenience store such as a 7-11 has a Trip Generation Rate of over 100 visits per hour.

Ms. Wyatt confirmed for Ms. Lambert that a convenience store would be parked as retail, not by customer service, but noted that even permitted uses such as a convenience store would still be subject to site plan review.

Mr. Hornik reminded the Board that convenience store is just one of several permitted uses in that district; pharmacies and grocery stores would also be permitted.

Ms. Lambert noted that although the proposed parking meets the minimum requirements of the UDO, it also states that, "A developer shall evaluate his own needs to determine if they are greater than the minimum specified by this section". Mr. Hornik confirmed for Ms. Lambert that they are comfortable that there would be adequate parking (both for employees and customers) if the proposal were to be approved. Mr. Greenebaum chimed in noting that the parking ratio here (in Nags Head) is significantly above industry standards. Ms. Young agreed, stating that they take parking very seriously in their daily operations. Ms. Young also confirmed the operating hours for the outlet mall and reiterated that peak time for Starbucks' business would be prior to when the stores open at the mall.

Ms. Young agreed that they have a right to change operating hours based on business trends but noted that there would be a lot of considerations given to changing those hours. Ms. Lambert stated that she was concerned about possible overlap noting that if Starbucks brings in early customers stores might want to open earlier. Ms. Young confirmed for Ms. Lambert that although the operating hours are 10 AM to 7 PM there is no rule that would prevent a tenant from opening earlier but she did not foresee that happening due to lack of work force.

Eugene Thompson, Architect with Ionic Design, addressed the Board via Zoom and displayed and reviewed for them some revised renderings that address some of Staff's comments with regards to the architecture design concerns.

There being no further questions for the Applicant and Staff, the Board began their discussion.

Ms. Harrison stated that while the Applicants meet the minimum parking standards, she was in agreement with Staff's recommendation.

Ms. Wright agreed, stating that she didn't think they could ignore what the Fire Chief had to say.

Ms. Lambert concurred, noting that while the consultant has done traffic studies in other resort areas they have not done any other traffic studies here in the Outer Banks and they can't ignore the concerns raised by the Deputy Fire Chief. Ms. Lambert also stated that it did not seem prudent to add an additional 15 parking spaces in the back of the property when there are already issues with the fire lane.

Mr. Elder agreed stating that one of the resort communities that the consultant mentioned having a done a study was Sea Pines which happens to be a gated community with an HOA, but this is not the case in Nags Head.

Mr. Elder also noted that it would seem like a good idea for the Board to renew discussions on the Town's parking standards town wide. Mr. Elder acknowledged that the Applicant had done a great deal to address the Board's concerns related to parking but noted that the solutions come with unintended consequences.

David Elder moved to recommend denial based on Staff's recommendations. Kristi Wright seconded, and the motion passed unanimously.

The Board took a five minute recess; the time was 11:20 AM.

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

Ms. Wyatt gave an update on the Board of Commissioner Actions, of note: A Public Hearing was held to consider text amendments to Section 11.10 of the Unified Development Ordinance as it pertains to dewatering activities such as the installation of in-ground pools; the Board adopted the ordinance as presented. Ms. Wyatt provided her Director's report which was well received. Town Manager Andy Garman gave a report on the upcoming Community Survey which included the Planning Board's comments; it was Board consensus that the project continue to move forward. It was also Board consensus to proceed with a Board of Commissioners/Planning Board Workshop after the August 2nd regular Board meeting – to discuss multi-family and other topics of mutual interest.

Town Updates

None

Discussion Items

Discussion Of Multi-Family Development within the Unified Development Ordinance

Vice Chair Lambert noted that this would be the Planning Board's last discussion prior to the joint workshop with the Board of Commissioners on August 2nd.

Planning Director Kelly Wyatt explained that at their June 20, 2023, meeting the Planning Board and planning staff discussed several aspects of re-introducing the "Multi-family Dwelling" use back into the Unified Development Ordinance. Ms. Wyatt then gave a summary of that discussion and what the Board had reached consensus on:

- It was the consensus of the Planning Board that the proposed definitions for "Multi-family Dwelling" and "Townhouse" were representative of the town's application and understanding of townhouse development and their relationship to multi-family dwelling developments.
- Consensus to remove the use of "Townhouse" from Section 6.6, Table of Uses and Activities, as all agreed that townhouse is a form a multi-family development.
- Consensus to propose the "Multi-family Dwelling" use in the C-2, General Commercial Zoning District and permitted via the Special Use Permit process with supplemental regulations found in Section 7.5 of the UDO.
- Staff was to bring back additional information/analysis on the existing supplemental regulations, specifically as it relates to density and in context to existing multi-family dwelling developments, such as Sugar Creek Condos.
- Consensus to remove the "Townhouse" use from the SPD-20, Special Planned Development Zoning District. This action would result in The Villas becoming a nonconforming use, however, recent amendments to the regulation of nonconforming uses would allow structures within the Villa's to be repaired, maintained, or replaced with an identical or similar structure and identical use, regardless of value provided no new nonconformities are created. In addition, site improvements could be made so long as they met the design and dimensional requirements applicable in the Unified Development Ordinance.
- While there was some discussion on proposing the "Multi-family Dwelling" use being permitted within the R-3, High Density Residential Zoning District, the Planning Board was not in consensus on this.
- It was the consensus of the Planning Board that Section 7.5, Table 7-1, Requirements for Multi-family dwellings, Density standards, be revised to eliminate the language pertaining to the application of a density bonus for "affordable" multi-family dwelling projects. The UDO does not currently define "affordable". In the interest of time, the Planning Board agrees with removing this verbiage, however, should the town be interested in pursuing this, an amendment could certainly be considered at a later time.
- Planning Board members did believe it would be helpful to consider different density/intensity criteria for multi-family in different geographic areas, for instance, a multi-family project on NC 12 may look different than it would on US 158.
- It was consensus that the Town should explore incentivizing multi-family in cases where it will accommodate our local workforce.

As noted earlier, at their previous meeting the Planning Board requested Staff to bring back additional information/analysis on the existing supplemental regulations, specifically as it relates to density and in context to existing multi-family dwelling developments, such as Sugar Creek Condos. In response to this request Ms. Wyatt presented a table (Table 7-1) comparing the current regulations to what was allowed when Sugar Creek Condos was constructed. Ms. Wyatt noted that minimum lot width had not changed but what was different were the setback requirements. Currently the minimum setback is 35 feet to all property lines. Back when Sugar Creek Condos were built the setback was 1.75 times the height at the top plate or roof panel in the tallest building with a minimum of 35 feet to all property lines. Height is the same, 40 feet to top plate or roof panel to original grade or finished grade, whichever is the greatest distance. Open Space requirement did change currently 50% of side yards must remain as open space whereas when Sugar Creek was built it was 50% of all setbacks that had to be left open. Ms. Wyatt noted that Lot Coverage is the same as it was previously (55%) as is Density, Minimum 26,000 square feet for the first three units, 3,500 square feet of additional lot size for each additional unit. The buffering standard is worded differently but pretty much says the same thing. The Unit Size Minimum is 800 square feet where it used to be 1000 SF. Building separation of 40 feet is the same. Finally, accessory uses remain unchanged.

Ms. Wyatt also presented a comparison to what other local municipalities allow:

- Town of Manteo – Multi-family is permitted as a Special Use. 8 units/acre with maximum of 48 units in the R2. Buildings cannot exceed 2,000 square feet of building area, whether on one floor or multiple floors, including porches, decks, and accessory structures under one roof. Separate buildings may not be connected when the total square footage of the connected structures exceeds 20,000 square feet. Buildings must be separated by 20 feet. 6 units/acre in B2, B3, and B4. No multifamily permitted in R5, Historic District and R2M, General Housing with Mobile and Modular.

Town of Kill Devil Hills – Multi-family is permitted by right, 18 units/acre.

Town of Kitty Hawk - Multi-family is permitted as a Special use, 14 units/acre.

Town of Duck – Multi-family is permitted as a Special use, 5 units/acre, soil suitability dependent.

Ms. Wyatt noted that no other Town has that Lot area requirement, they just have a straight unit per acre, which means that in Nags Head you couldn't have a multi-family dwelling on anything less than 26,000 SF.

Ms. Wyatt then shared some thoughts for the Board to consider ahead of their joint meeting with the BOC:

What does the Board think is the purpose of multi-family and what are we trying to accomplish with it?

Ms. Wyatt noted that in general the Board seems in agreement that the Town should allow multi-family, the C-2 Zoning District seems the best place for it and ideally, they would want it for workforce housing. But without proper regulations in place there is no guarantee that a newly built multi-family development wouldn't be used as vacation rental or a short-term rental. Ms. Wyatt stated that she had looked at a couple of existing multi-family developments, one being Atlantic Crest, and found that they are primarily used as vacation rentals.

If the goal is long term, workforce type housing how would it be regulated? Ms. Wyatt noted that Town Manager Andy Garman is looking into this with the Town Attorney, and they should have an answer as to whether Deed Restrictions are allowed by the August 2nd meeting.

If Deed Restrictions are allowed what is the process, how would they be enforced?

It seems like the Planning Department might be the likely path to enforcement; what would that mean for the department?

Mr. Elder discussed the fact that property owners are finding that Airbnb, VRBO may not be the “best bang for their buck” and suggested figuring out a way to show them the advantage of going another route.

Ms. Lambert suggested finding ways to incentivize property owners who choose deed restrictions, as AirBnBs are not the same as they were four years ago; property owners might be willing to go a different route.

Ms. Wright noted that they if they were to go that route they would need to look at some type of protection for property owners/landlord – in the case of long term rentals for example it is harder to get somebody out, the renters have more rights.

Ms. Lambert stated she believes tenant rights are different when there is an end date. Ms. Wright agreed, noting that this is why there is hesitancy to have long-term rentals.

Ms. Wyatt asked the Board for them to consider if there is a way to incentivize workforce housing without it being tied to income. Ms. Wyatt would also like the Board to think about whether they want to consider stricter architectural standards for Multi-Family Development. Finally, Ms. Wyatt would like the Board to think about whether they want to keep or revise that 26,000-lot size requirement or do they maybe want to consider small multi-family clusters.

Mr. Ferguson inquired about density requirements for Cottage Courts noting that they could be a possibility for use as workforce housing. Ms. Wyatt reviewed those requirements for the Board.

Mr. Elder stated that they also need to see how the definition of Single Family, Duplexes and ADUs also fit into workforce housing options.

Ms. Wyatt noted and the Board seemed to concur that at the end of the day they may need to separate multi-family from workforce housing; add multi-family back in to the UDO and then tackle workforce housing as a different issue.

June 28th, 2023, Director's Report

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

Planning Board Members' Agenda

None

Planning Board Chairman's Agenda

None

Adjournment

A motion to adjourn was made by David Elder. The time was 12:04 PM.

Respectfully submitted,
Lily Campos Nieberding