
**Town of Nags Head
Planning Board
August 15, 2023**

The Planning Board of the Town of Nags Head met on Tuesday, August 15, 2023, in the Board Room at the Nags Head Municipal Complex.

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

Members Present

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

Members Absent

Meade Gwinn

Others Present

Kelly Wyatt

Approval of Agenda

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

Public Comment/Audience Response

Duke Gheraty, Government Affairs Director, Outer Banks Homebuilders Association, read through multi-family item, two items of note, multifamily have to front the bypass – had a good project on the bypass and was not acceptable, now we are going back to it. Need to solve housing problems. A lot of language about workforce housing but need housing for first time home buyers. Need more options to house people here. Board members all noted they appreciated his input and comments.

Approval of Minutes

Chair Vaughan asked for a motion to approve the minutes of the July 18, 2023, meeting. David Elder moved to approve the minutes as presented; Kristi Wright seconded, and the motion passed unanimously.

Action Items

Consideration and initiation of a text amendment to Section 6.5.3 of the UDO, Classification and Review of Unlisted Uses, to list Pawnbrokers, Metal Dealers, Scrap Dealers and Precious Metal Businesses as specified in NC General Statutes, Chapter 66 Article 45, as prohibited uses within the Town.

Planning Director Kelly Wyatt explained that the Planning & Development Department and the Police Department had recently been contacted by a business called National Rarities, an out of state business operating as a "Precious Metals Dealer" in anticipation of conducting an event within an existing retail jewelry shop. She stated that they would evaluate items such as jewelry brought in by the public, assess the value and then purchase the items from the public. The company had reached out to the Town because they were interested in acquiring any permits necessary to conduct this event within the Town.

Ms. Wyatt stated that in review of the request, staff discovered that precious metals dealer businesses are regulated by the North Carolina General Statutes, Section 66, Article 45 and that it was attached for the Planning Board's review. The statute addresses regulations for Pawnbrokers, Cash Converters, and Precious Metals Businesses. In the statute, the regulations pertaining to precious metals businesses begin with NCGS Section 66-405. Ms. Wyatt noted that while these uses may seem unrelated, in each scenario they are engaging in the business of purchasing goods from the public for cash and as such are treated similarly.

Ms. Wyatt informed the Planning Board of the permitting process required to obtain the appropriate permits through the local law enforcement agency, as noted in NCGS Section 66-407. She went on to note that the UDO doesn't contemplate these types of uses, and specifically does not address precious metals businesses. Section 6.5.1 of the UDO, Classification and Review of Unlisted Uses, sets forth the rules that the UDO Administrator must follow in determining whether an unlisted use is substantially similar to an already defined use category and how to thus classify the unlisted use. Section 6.5.2 outlines what must occur if the UDO Administrator rejects a proposal for a use that is not clearly disallowed within a particular district, and the recourse that can be taken by filing for an appeal of the administrative decision or seeking a zoning ordinance text amendment. Lastly, section 6.5.3 of the UDO lists the uses that are expressly prohibited in the Town of Nags Head planning jurisdiction.

Ms. Wyatt stated in order to provide clarity, planning staff would like to facilitate a discussion with the Planning Board on the appropriateness of these uses within the Town. She noted that NCGS 66-405, states, "The General Assembly finds and declares that precious metal businesses in North Carolina vitally affect the general economy of the State and the public interest and public welfare, and in exercise of its police power, it is necessary to regulate such businesses, in order to prevent thefts, disposal of stolen property, and other abuses upon its citizens". She went on to note that while staff recommends amending Section 6.5.3 of the UDO to list the uses, "Pawnbrokers, Cash Converters, Metal Dealers, and Precious Metals Dealers" as expressly prohibited uses within the Town, should the Planning Board be inclined to recommend their allowance within the Town, Staff would like to discuss the permitting mechanism and appropriate conditions.

Ms. Wyatt informed the board that staff had included drafts of various forms required as part of the permitting process for a Precious Metals Business. These include existing checklists and forms created by the City of Asheville, NC for reference.

Ms. Harrison asked how the Police Chief felt about this proposal, was Chief Hale for or against the prohibition of the uses specified in Article 45? Ms. Wyatt stated that Chief Hale had made contact with officers in other North Carolina municipalities whose jurisdiction allowed precious metals dealers and was told that instances of theft had increased in the areas with these uses.

Ms. Wright asked if there were any pawn shops within Nags Head? Ms. Wyatt responded that there were not any pawn shops or precious metals dealers currently within the Town. Planning Board members noted that similar activities had occurred at Jewelry by Gail in the past. Ms. Wyatt noted

that Jewelry by Gail is where National Rarities would like to hold their event and that currently the jewelry shops within the Town are considered retail use, where they sell goods directly to the public.

Ms. Harrison asked whether this business was interested in operating within Jewelry by Gail temporarily or full time. Ms. Wyatt noted that they are interested in locating within the jewelry shop for a temporary event, approximately 3 – 5 days as she understands it. Ms. Wyatt noted that while temporary uses are allowed, the use itself must be allowed within the Town as well.

Ms. Lambert asked if this ordinance would affect the businesses/people that will take scrap metal from you when placed in your yard? Ms. Wyatt stated that this ordinance would not affect the person removing pieces of scrap metals from bulk collection in individual yards but it would address a businesses operating as a scrap metal businesses.

Mr. Elder and other board members noted that there is a wide scale to the uses but that operations could have unintended consequences.

Ms. Harrison and other board members stated that they would not necessarily have a problem with a "weekend event" for purchasing jewelry, but as a whole they had concerns.

Mr. Elder inquired about who would be considered the local law enforcement agency in review and issuance of the precious metals dealer permit. Ms. Wyatt noted that because the jewelry shop is located within the Town of Nags Head, the Nags Head Police Department would be the local law enforcement agency issuing and enforcing the dealer permits.

Ms. Harrison inquired about the necessity for police involvement in permitting, questioning if it was because of the exchange of cash and potential for stolen property. Mr. Elder noted that it opens the door up for general fraud issues, and other Board members inquired about what could be considered a precious metal, could a firearm, etc. but categorized as a precious metal? Ms. Wyatt noted that yes, much of the concern and need for police oversight in permitting is due to the potential for stolen property being taken to precious metals dealers. She went on to note that precious metals include gold, silver, bronze, palladium, etc. and thus other items, potentially firearms may qualify as a precious metal. Ms. Wyatt did state that National Rarities was only interested in jewelry. Board members understood, noting that they would look at the big picture in terms of the use and not what one business was proposing to do.

There being no further discussion, Mr. Elder moved to follow Staff's recommendation and list the uses within NCGS Section 66 Article 45 as prohibited uses in Section 6.5.3 of the UDO. Ms. Lambert seconded, and the motion passed unanimously.

Report on Board of Commissioners Actions – August 2nd, 2023

Ms. Wyatt gave an update on the Board of Commissioner Actions, of note: the two items for the proposed Starbucks Drive Through at Outlets Nags Head, the text amendment and the Special Use Site Plan Amendment have been temporarily pulled for consideration by the applicant. Staff anticipates both will come back with proposed revisions. Ms. Lambert asked if both would come back to the Planning Board for their consideration and recommendation if re-submitted. Ms. Wyatt noted that yes, both of these items would require Planning Board review and recommendation and that additionally, staff would be working on a policy by which text amendments and site plans could not run simultaneously as it had created some problems and confusion along the review process. Staff also noted that the Board of Commissioners held the Public Hearing for the DCM Grant for Governor

Street Beach Access and that the final grant application would be sent to DCM for consideration no later than August 28th, 2023. Lastly, Ms. Wyatt noted that the minutes from the Board of Commissioners and Planning Board joint workshop were included in the Planning Board packet for review.

Town Updates

None

Discussion Items

Discussion Of Multi-Family Development within the Unified Development Ordinance

Planning Director, Kelly Wyatt briefly outlined the takeaways from the Planning Board and Board of Commissioners Joint Workshop, held on Wednesday, August 2nd, 2023:

- Consensus that there is a workforce housing issue, and that multi-family development could serve as piece of the workforce housing puzzle.
- Consensus that density and lot coverage are important considerations in the conversation and that maxing out a development is not in keeping with the Nags Head vision. Developing projects at an appropriate density to include adequate greenspace is what separates Nags Head from other areas.
- Consensus to continue to explore the use of deed restrictions for workforce and/or long-term housing opportunities.
- Agreement that reintroducing multi-family development without additional restrictions in light of the Town's existing concerns with density and parking would not be beneficial.
- Consensus that the goal of this exercise is to create housing opportunities for the people that live and work here, not to increase the supply of vacation rentals.

With this in mind, staff drafted the following ordinance revisions for the Planning Board's review and discussion.

- Propose new definitions for the "Multi-Family Dwelling" and "Townhouse".
- Proposed definitions for terms "Workforce Housing" and "Long-term Occupancy", highlighted in yellow and for discussion purposes only. *Ms. Wyatt noted that if the Planning Board wished to utilize these definitions in any capacity further discussion would be necessary on the number of consecutive days/months required for long term occupancy/tenancy and the specific requirements to qualify for workforce housing.*
- Amend Section 6.6, Table of Uses and Activities to remove "Townhouse" use from the table as it considered a form of multi-family development.
- As a result of this, townhouse use will no longer be permitted in the SPD-20 District. The Villas would become a nonconforming use regulated by Section 5.6 of the UDO.
- List the "Multi-Family Dwelling" use as a Special Use within the C-2, General Commercial Zoning District and subject to the supplemental regulations of Section 7.5 of the UDO.
- Amend Section 7.5 of the UDO to clarify minimum lot size and lot width requirements as well as a requirement that the lot must have frontage on US Highway 158.
- Amend Section 7.5 of the UDO to include language on deed restrictions.

Ms. Wyatt noted that while perhaps not exactly what the Town is seeking to establish, staff has found that the information, FAQ's, applications, and deed recordation documents associated with Vail

InDEED, and the Breckenridge Housing Helps Program to be very insightful and beneficial for the purpose of getting ideas on how other locations have approached this issue.

Vail InDEED: <https://www.vailgov.com/government/departments/housing/vailindeed>
Breckenridge Housing Helps: <https://www.townofbreckhousing.com/housing-helps>

Excerpts from the FAQ's of Breckenridge Housing Helps Program:

Why Should I Consider Deed Restricting My Property?

The Town's goal is to help locals stay in the community where they can live, work, play, and raise their families. The most recent Housing Needs Assessment indicates there is a significant shortage of housing to serve the needs of local families and employees. This impacts the ability of businesses to recruit and retain employees and provide the products and services needed. The lack of housing also impacts the character of our community when locals are unable to live in the community where they work. By deed restricting your property you are helping Breckenridge retain a variety of housing options for locals. You may use the proceeds that you received from the Town in return for the deed restriction for any purpose.

What are the Key Terms of the Deed Restriction?

The key terms of the [light deed restriction](#) (15-19%) include:

- 1. The property must be occupied as a primary residence by a person employed a minimum of 30 hours a week in Summit County.*
- 2. The property may not be used as a seasonal home, vacation home, or as a short-term rental.*

Unlike some other deed restricted properties these units will not be subject to qualifying income limits. Retirement in these properties may be permitted subject to the Town's retirement policies for deed restricted units. Please refer to our most current [guidelines](#) for more information.

Some remaining questions for the Planning Boards consideration include:

- How to categorize the type of housing being sought? Workforce Housing, Career Housing, Long-Term Occupancy Housing, other thoughts?
- Clarify what percentage of units should be deed restricted? All units or portion of units?
- Should multi-family dwelling developments require increased architectural design requirements in addition to, or in conjunction with those set forth in Article 10, Part VI, Commercial Design Standards.

Ms. Wyatt then shared a power point presentation that had been prepared depicting all of the properties within the Town that was adjacent to US Highway 158 and a minimum lot area of 26,000 square feet. Additionally, some rudimentary density information has been provided based upon the lot area. This was presented to the Planning Board for discussion purposes only.

Planning Board Discussion Notes:

- Consensus that we do not want multi-family development for the purpose of providing any short-term rental opportunities.
- The number of underlying lots on some of the vacant properties should be relevant to density discussions. Disparity in density if developed residentially versus multi-family?
- Discuss standards for properties with dual frontage on NC 12 and US Highway 158 if developed with multi-family.
- Discuss with extensive marsh/wetland areas – this area should not be calculated for density purposes. Marshlands are decreasing, ACOE fill permits could result in increased uplands.

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- Need to consider redevelopment opportunities and combining parcels for development of multi-family.
 - Density is a primary concern. Should there be different density standards for large multi-family developments versus smaller pockets or clusters of multi-family? The 3,500 square feet per additional unit seems to be the greatest gain in unit numbers.
 - Density, lot coverage, setbacks relevant regardless of deed restricted, not deed restricted, etc.
 - City of Wilmington has attractive multi-family developments, both large and small pockets.
 - Keep in mind that septic will be restrictive.
 - Interested in study of residential units on top of existing commercial – Mayor Cahoon conducting analysis. Review of excess parking, water usage numbers and Dare County Health septic numbers. Are these prohibitive?
 - Preference for townhome developments over apartment style developments.
 - Would not want to lose existing commercial properties to multi-family development.
 - Healthy communities require various types of housing. Multifamily is part of housing solution.
 - Would not want deed restrictions to be tied to number of hours worked per week (like Vail and Breckenridge).
 - What is appropriate time frame in determining “long term”? Lifeguards only need housing for 3 months, not 6 months.
 - This type of multi-family may work better for long term housing concerns/year-round. Perhaps different standards for more seasonal workers?
 - ADU’s, duplexes, etc. are other opportunities for solutions to larger housing problem. Still need to have these conversations, separate conversation?
 - Consensus to deed restrict ALL units to long term occupancy/tenancy and deed restrict as necessary to ensure that no less than 60% of the total number of units are for workforce housing.
 - Staff needs to work on definitions for Long Term Occupancy and Workforce Housing.
 - Consensus that long-term should be minimum of 91 days, relate back to Vacation Rental Act.
 - Consensus that there should not be minimum number of hours worked relative to workforce housing, simply need to be employed within Dare County. (Consider Currituck County?)
 - Need definition of “employed”. Need to consider interns, people seeking educational opportunities, nonprofit and volunteer work. What about remote workers?
 - Consideration given to business owner purchasing unit(s) and allowing seasonal employees to live there. Could be a potential opportunity. Do we need to discuss with large employers if this is something they are interested in?
 - If continue with this, who enforces this? Vail and Breckenridge use Housing Authority.
 - Could the owner rent out their townhome? Yes, the renter would need to meet the requirements of the qualifying person.
 - Enforcement of this is key. Housing programs are difficult programs to administer, are Planning staff capable? Breckenridge & Vail require property owner or qualifying person to submit letter documenting employment, stating all information is true and correct to the best of their knowledge. Assume people have good intentions and will not take advantage.
 - Neighbors and other owners/tenants will report people in noncompliance, likely to be complaint driven.
 - If this doesn’t work, developers are not interested, text amendments can be applied for and considered at that time.
 - Should we consider two tiers of development – small lots versus large lots? 26,000 minimum lot size as the breaking point? Smaller pocket/cluster have different standards? Do not want to discourage smaller pockets.
 - Don’t want to discourage the smaller pockets.

- Architecturally require structures to utilize the residential design manual (instead of Division II Building Design), consider requiring each structure to obtain 175 points so that we get more elements of the residential design.
- Involve Fire Department in discussion moving forward with regard to fire lanes, sprinklers, etc. Run TRC on text amendment.
- Conversation changer when realized how many properties meet the requirements of 26,000 square foot lot minimum and adjacent to UD 158.

July 27th 2023, Director's Report

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

Planning Board Members' Agenda

Discussion of fire suppression measures, educational opportunities, different types alarming, etc. for single-family developments maximizing development opportunities to ensure safety. Drive aisles, stacked parking, egress, ingress in times of an emergency need to be a conversation. Likely to become a larger conversation, staff will pursue and provide feedback. Should consideration be given to requesting special legislation for fire protection measures?

Planning Board Chairman's Agenda

None

Adjournment

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

Respectfully submitted,
Kelly Wyatt