
**Town of Nags Head
Planning Board
September 19, 2023**

The Planning Board of the Town of Nags Head met on Tuesday, September 19, 2023, in the Board Room at the Nags Head Municipal Complex.

Planning Board Chair Megan Vaughan called the meeting to order at 9:06 a.m. as a quorum was present.

Members Present

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

Members Absent

Kristi Wright, Meade Gwinn

Others Present

Kelly Wyatt, Lily Nieberding, Joe Costello

Approval of Agenda

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

Public Comment/Audience Response

Nags Head business owner, Gail Kowalski, Jewelry by Gail addressed the Board with regards to the Precious Metal text amendment. Ms. Kowalski asked for and received clarification on the definition of jewelry retail. Ms. Kowalski requested that the Board "keep it as simple as possible".

Dave Shufflebarger, Nags Head Resident, addressed the Board and spoke about the challenges the town is facing with regards to workforce housing. He stated that he is on the Board for the YMCA, and they have had to bus employees from Elizabeth City. Mr. Shufflebarger encouraged the Board to continue their work related to workforce housing.

Steve Romine, attorney for National Rarities, addressed the Board with regards to the Precious Metal text amendment. Mr. Romine explained that National Rarities is a national company that holds special events in connection with local jewelers. The company buys jewelry and other items during these special events, which are held once or twice a year for a few days. Mr. Romine does not feel that there should be any additional approvals for them to obtain once they have their state license and permits in place.

Approval of Minutes

Chair Vaughan asked for a motion to approve the minutes of the August 15, 2023, meeting. David Elder moved to approve the minutes as presented; Molly Harrison seconded, and the motion passed unanimously.

Action Items

Consideration Of Text Amendments to Sections 6.5, Classification and Review of Unlisted Uses, Section 6.6, Table of Uses and Activities, and Article 7, Supplemental Regulations as it pertains to listing Pawn Shops and Pawn Brokers as expressly prohibited uses within the Town and listing the appraisal and purchase of precious metals as an acceptable accessory use to retail jewelry shops.

Planning Director Kelly Wyatt explained that at their August 15th, 2023 meeting, planning staff updated the Planning Board on recent inquiries and discussions with a business known as National Rarities, operating as a Precious Metals Dealer, and seeking permitting to host a temporary event at a local jewelry shop where they will evaluate and purchase jewelry from citizens. Staff had proposed, and the Planning Board had concurred, that all the uses listed and regulated by NCGS Section 66 Article 45, including Precious Metals Dealers, should be expressly prohibited within the Town.

At their September 6, 2023, meeting the Nags Head Board of Commissioners requested that this item, which had been placed on the consent agenda for scheduling of a public hearing, be removed and an update be provided by staff on the discussions and recommendation to date. While the official minutes of this meeting are being drafted, Ms. Wyatt noted that a recording of the Board of Commissioners September meeting can be viewed on youtube.com with public comment by jeweler Gail Kowalski and the attorney for National Rarities, Stephen Romine around the 13:00 minute mark and the presentation by staff at the 58:00-minute mark.

It was the consensus of the Board of Commissioners that staff revise and present to the Planning Board an ordinance amendment which would accomplish the following:

- Specify that retail jewelry shops are permitted to not only sell jewelry and similar items, but also to engage in the appraisal, purchase and repair of jewelry and similar items.
- Allow retail jewelry shops to allow precious metals dealers to operate as an accessory use within the existing shop for a specified time on a temporary nature.
- Expressly prohibit pawn shops and pawn brokers within the Town.

Ms. Wyatt proceeded to review the draft ordinance for the Planning Board's consideration. Staff believes the revised draft reflects the Board of Commissioners guidance and reiterates the compliance measures required under NCGS Section 66 Article 45 with regards to the Precious Metals Dealers Permit issued by the local law enforcement agency.

Mr. Ferguson noted that Ms. Kowalski manufactures jewelry at her shop but noted that the manufacturing of jewelry does not appear to be in the definition. Ms. Wyatt confirmed that the manufacturing of jewelry falls under the definition for artisan workshop which is allowed in the C4 zoning district.

Ms. Wyatt confirmed for Ms. Harrison that Staff would prefer to keep the word 'Approval' in the ordinance language.

Ms. Wyatt confirmed for Ms. Kowalski that this text amendment would only cover precious metals.

Following a brief discussion, David Elder moved to recommend approval of the text amendment as submitted. Megan Lambert seconded, and the motion passed unanimously.

Site Plan Review submitted by House Engineering, P.C. for construction of a four-story, 90-unit Hotel (Inn at Whalebone). The property is zoned SPD-C, Village Hotel is located within the Hotel Overlay District and is located at 6632 W. Pheasant Avenue

Ms. Wyatt explained that the Site Plan for Inn at Whalebone was reviewed and approved by the Nags Head Board of Commissioners on October 5th, 2022. The site plan approval is set to expire one (1) year from the date of approval, which would be on October 5th, 2023. Staff were recently contacted by the applicant to discuss the upcoming expiration and what steps could be taken to extend the approval.

Ms. Wyatt explained that unless a Vested Right is requested at time of application, a site plan approval by the Board of Commissioners notes that a building permit must be issued within twelve (12) months from the date of approval, or the site plan approval expires. A Vested Right cannot be given retro-actively so an applicant would have to submit a new site plan review conforming with the current provisions of the Unified Development Ordinance.

In speaking with the applicant, they are not ready to submit a complete development permit application in order to have a building permit issued in advance of October 5th, 2023. As such, they have resubmitted their previously reviewed and approved Site Plan Review application for the Planning Boards consideration. The staff report from the Board of Commissioners October 5th, 2022 meeting has been provided below for the Planning Board's consideration.

The Planning, Fire, Police, and Public Services Department as well as the Town Engineer have all reviewed the submittal and find it to be consistent and still in compliance with October 5, 2022 approved submittal. There have been no changes to the applicable codes for each respective department over the past year that would affect this submittal, therefore staff recommends approval of the Site Plan Review as submitted.

Ms. Wyatt noted that the finalized Traffic Impact Analysis was received and reviewed by NCDOT in advance of the October 5th, 2022 Board of Commissioners meeting. Town Engineer David Ryan reached out to Jason Davidson, Division Traffic Engineer with NCDOT to see if anything over the past year would result in them providing comments or necessitating additional review. Mr. Davidson confirmed that they did not have anything new or additional affecting this site moving forward.

Ms. Wyatt stated that there are multiple parcels so Staff's recommendation of approval of the Site Plan comes with the following condition carrying over from the previous review:

An approved subdivision plat addressing the portions of lots 24, 29, 30 and 31 and a recombination plat addressing lots 32, 33, 34, 35, 36, 22, 23, 26 and 27 be approved and filed at the Dare County Register of Deeds prior to the issuance of any development permits for the proposed hotel project.

Ms. Wyatt noted that just yesterday Bissell Engineering forwarded her a draft recombination plat so they are aware that it is required.

Ms. Wyatt also noted that she had included the Staff report from last year in the Board's packet for their review and that Rick House with House Engineering was present and available to answer any questions for the Board.

Mr. House confirmed for the Board that Lakeside used to be called Pheasant Avenue.

Ms. Wyatt confirmed for Mr. Ferguson that there have been no changes to the UDO in the past year that would impact this development.

Mr. Elder asked if Staff received any other comments from NC DOT. Ms. Wyatt read the Board an email between Town Engineer David Ryan and NC DOT confirming that there were no changes.

Ms. Wyatt discussed curb cuts with Ms. Harrison, noting that the UDO states that development should access side streets, if at all possible, which is why developers chose to have access from Lakeside rather than the bypass (US 158).

Ms. Harrison, Ms. Lambert and Mr. Elder all expressed safety concerns with regards to pedestrian and vehicular traffic. Ms. Lambert wanted to make sure that their concerns were relayed to the Commissioners. Mr. Elder expressed concern about drivers making left turns at the bypass and noted that NC DOT does not seem to share their traffic safety concerns. Ms. Harrison agreed, noting that NC DOT does not seem to be representing the people of Nags Head fairly.

Engineer Rick House with House Engineering addressed the Board. The property owner now has approval from Marriott to move forward. They now also have State Stormwater approval as well. They should have everything ready to submit for Building Permits in the early part of next year. They will ensure that everything that is required or recommended by NC DOT will be adhered to.

Ms. Wyatt suggested doing a traffic impact analysis one year after CO and could put it as a condition of approval.

Ms. Wyatt confirmed for the Board that nothing has changed that would precipitate a denial at this point.

Megan Lambert moved to recommend approval of the site plan with the condition that a TIA be revisited one year after construction. David Elder seconded and the motion passed 4 to 1, with Molly Harrison casting the Nay vote.

Initiation of Text Amendment to Section 9.36, Table of Uses and Activities for the SPD-C District to list Municipal building, including Fire Station, Police Station, EMS, and Administrative Offices as a permitted use within the Village SPD-C, Commercial-1 District.

Ms. Wyatt explained that Staff is requesting that the Planning Board initiate the text amendment process for the amendment of Section 9.36, Table of Uses and Activities within the SPD-C, Village at Nags Head, Commercial -1 District to list "Municipal building, including Fire Station, Police Station, Administrative Office, and County EMS Station" as a permitted use within the district.

Ms. Wyatt noted that the town owns the property located at 105 W. Seachase Drive (formerly BB&T, currently the Village Realty building). This property is zoned SPD-C, Village at Nags Head, Commercial-1 District. The Town is currently in discussion with Dare County about the potential development of an Emergency Medical Service/EMS facility on this property in the future. In order to accommodate this potential development Section 9.36, Table of Uses and Activities would need to be amended accordingly.

If the Planning Board is amenable to the initiation of this amendment staff will move forward with the requested revision as well as reviewing all Village at Nags Head regulations to determine what, if, any other obstacles may exist at this time.

Mr. Ferguson noted that he thought that at one time police and fire stations were allowed in all zoning districts. Ms. Wyatt confirmed that this has not been the case since for as long as she has been with the Town. Ms. Wyatt then proceeded to show where the use (municipal building) is allowed in town; allowed as a permitted use in some districts, as a special use in others and not allowed at all in others.

David Elder moved to recommend initiation of the text amendment. Molly Harrison seconded, and the motion passed unanimously.

Report on Board of Commissioners Actions – September 6th, 2023

Ms. Wyatt gave an update on the Board of Commissioner Actions, of note:

During Public Comment Gail Kowalski and Steve Robine on behalf of National Rarities spoke with respect to the Text Amendment; Ms. Wyatt summarized for the Commissioners, the Planning Board's discussion on the multi-family dwellings – they were all very appreciative of that and requested that the Planning Board discuss potential incentives further; In response to Mayor Cahoon, Ms. Wyatt said that restrooms at Whalebone Park are to be added this fall; Staff is slowly moving forward with EVs at Town Hall - Comr. Renée Cahoon noted that charging stations should meet the broad range of electric vehicles; the Septic Health Initiative Advisory Committee's progress was updated by member Bob Muller, and Environmental Planner Conner Twiddy provided some general updates from the Septic Health Initiative Program.

Town Updates

Ms. Wyatt updated the Board on a proposed development on Wrightsville Avenue – a duplex to be constructed with several shipping containers. Ms. Wyatt presented a rendering of the proposal and confirmed for Mr. Elder that there is little to no pre-work being done, all work will be completed onsite.

Ms. Wyatt introduced Joe Costello, the new Deputy Planning Director, to the Board.

Discussion Items

Continued Discussion of Multi-Family Development within the Unified Development Ordinance

Ms. Wyatt explained that at the Planning Board's August 15th meeting, staff discussed some minor updates to the draft ordinance and provided a presentation on both vacant and developed properties within the Town that would meet the minimum criteria for multi-family development discussed thus far, being a minimum lot size of 26,000 square feet and frontage on US Highway 158. Ms. Wyatt noted that the Planning Board had a great discussion and reviewed some of the primary takeaways:

- o Consensus that the Town does not want multi-family development for the purpose of providing any short-term rental opportunities.
- o Consensus to deed restrict ALL units to long term occupancy/tenancy and additionally deed restrict as necessary to ensure that no less than 60% of the total number of units are for workforce housing. This will require creating several new definitions including: "long term occupancy/tenancy" and

"workforce housing", as well as guidance on what the term "employed" encompasses in terms educational opportunities, internships, etc.

- o Consensus that "workforce housing" should not be defined by one's salary, or a minimum number of hours worked, simply need to be employed within Dare County.
- o Consensus that long-term occupancy/tenancy should mean that the occupant resides in the dwelling unit a minimum of 91 days (NC Vacation Rental Act). Believe that 91 days may still be beneficial for summer workers and lifeguards, a minimum of 6-month occupancy would preclude these employees.
- o Consensus for a preference of townhouse developments over apartment style developments.
- o Interested in study of residential units on top of existing commercial – Mayor Cahoon has been conducting this analysis. Review excess parking, water usage numbers and Dare County Health septic numbers, are these factors making this development prohibitive?
- o Consensus that multi-family is only one aspect and that ADU's, duplexes, etc. represent other opportunities for solutions to the larger housing problem. Still need to have these conversations, perhaps better discussed as a separate initiative.
- o Consideration should be given to business owners purchasing unit(s) and allowing their seasonal/workforce employees to live there; could be a potential opportunity.
- o If the Town adopts an ordinance utilizing deed restrictions who enforces them?
- o Question if the owner could rent out their townhome? Yes, however the renter would need to meet the requirements of occupancy for 91 days or more and employed in Dare County.
- o If the Town adopts this ordinance and developers are not interested, text amendments can be applied for and considered at that time.
- o 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.
- o When the draft ordinance is substantially complete staff will involve the Fire Department in discussion moving forward with regard to fire lanes, sprinklers, etc.; should be taken through the Technical Review Committee process for input.

At their September 6th meeting the Board of Commissioners requested that staff and the Planning Board give consideration to developing possible incentives for multi-family development.

Deputy Planning Director, Joseph Costello drafted some potential incentives for the Planning Board consideration which Ms. Wyatt reviewed for the Board:

- Slight increase in the maximum building height for multi-family: The current requirement is 40 feet to the top plate or roof panel to original grade or finished grade, whichever is the greatest distance and total height shall not exceed 47 feet.
- Reduction in the minimum 35-foot setback for side yards: Could consider an increase in the vegetative buffer requirement to ensure sufficient screening, should only consider this if the multi-family development borders existing commercial use.
- Reduction in parking minimums for multi-family development: The current requirement is a minimum of two (2) parking spaces for each dwelling unit plus 0.5 spaces for each additional bedroom over 2. Consider eliminating the 0.5 spaces requirement. The Town always rounds up, so a 3-bedroom unit would require 2.5 parking spaces and we would require 3 spaces and a 4 bedroom would require 3 spaces and so on. Are 2 spaces adequate for a 3- or 4-bedroom unit?
- Offer fee waivers for site plan submittal fee, permit fees or other opportunities. The required fee for a Site Plan Review is .50 cents/square foot so for example the Site Plan Review for the 90-unit hotel was about \$23,000.

In addition to the incentives, Ms. Wyatt also reviewed some other items of note for the Planning Board's consideration:

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- o Staff have revised the definition of *long-term occupancy/tenancy* to mean the occupancy of a dwelling unit for a minimum of 91 days. Ms. Wyatt asked the Board to discuss if 91 days would help seasonal employees, lifeguards?
 - o Staff has elaborated on the definition of "*workforce housing*" and has attempted to define certain terms as they pertain to workforce housing including, "principal place of residence", and "person", and has included verbiage that the word "employed" includes anyone engaged in educational activities, internships, and volunteer efforts. Ms. Wyatt asked the Board to discuss noting that the proposed definition of workforce housing states that a "person" cannot be an entity, however, if the Planning Board would like an option for employers to purchase deed restricted units (like Food Lion for example) additional language and guidance would be required.
 - o Additional language has been proposed within Section 7.5, Supplemental Regulations for Multi-family development to clarify that all units shall be deed restricted to *long term occupancy/tenancy* and additional restrictions needed to ensure that a minimum of 60% of the units within the development are retained for *workforce housing*.
 - o Deed restriction shall include language that any short-term rental of the entire dwelling unit or portion of the dwelling unit is expressly prohibited.
 - o Staff will provide a presentation regarding density for the Planning Boards consideration.
 - o As shown in the presentation from the Board's previous meeting, there are no vacant properties meeting the current criteria (min 26,000 sf, 158 frontage, C2 District) that have dual frontage on US Highway 158 and S. Virginia Dare Trail. There are two (2) developed lots that do have dual frontage. In the event that either of these properties should be re-developed as multi-family the Planning Board and Board of Commissioners may want to consider limiting access onto and from S. Virginia Dare Trail.
 - o Should an ordinance regulating multi-family development through the use of deed restrictions be adopted, the enforcement of the deed restrictions will need significant discussion and input from the Town Attorney. It is anticipated that the Planning Department would be responsible for ensuring compliance and enforcement of the deed restrictions. Any deed restriction shall include a statement that the owner or tenant agrees to provide all documents and information necessary for the Town to establish continued compliance. In addition to establishing regular contact with the homeowners/tenants, we may consider an annual registration/inspection to ensure compliance and/or require that annually the owner submit a written statement to the Town including adequate information to determine compliance and stating that such information is true and correct to the best of the owner's knowledge and belief.
 - o In an effort to ensure that any multi-family development is architecturally consistent with the Nags Head Style, the Planning Board may want to consider requiring that all multi-family developments provide a minimum of (175/200) architectural design points as set forth in the Residential Design Manual.
 - o Next steps – after incorporation of all Planning Board recommendations, staff will request that all members of the Technical Review Committee (TRC) review the proposed amendments and provide feedback specifically input on NC Residential Building Code and Fire Prevention Code requirements.

Ms. Wyatt then reviewed the existing and proposed definitions with regards to Multi-Family and Workforce housing.

Ms. Harrison inquired about the workforce housing building next to St. Andrews. Ms. Wyatt explained that it was permitted as a dormitory; the main building is a dormitory and there are apartments in the back. Ms. Wyatt stated that they have had issues with overcrowding that required town interventions to get it back on track. Ms. Harrison noted that this calls attention to the fact that even if you build something it still needs to be managed and regulated.

Ms. Wyatt confirmed for Mr. Ferguson that they have not yet analyzed different standards for different sized multi-family projects, but staff is aware that the Board is interested in looking at this further and will be bringing this back for further discussion at a later meeting.

Deputy Planning Director Joe Costello presented a PowerPoint slide show giving different Townhome Development Scenarios with renderings depicting density for a 1-acre lot and a 3-acre lot at 3,500, 4,500 and 5,500 square feet for each additional unit.

The Board appreciated having a visual of what this type of development might look like, and the amount of green space shown. Mr. Costello noted that in the municipality where he came from, they had limitations on the number of units per cluster so there are different things that can be done to create side yards and green spaces and other amenities.

The Board discussed one of the Town's existing multi-family developments – The Quay Condos and were in agreement that they liked the size of the clusters and the overall layout of the property. Ms. Wyatt confirmed that the property is non-conforming.

Mr. Costello noted that there are many potential layouts that could be put on a lot, and it does make a difference as far as how it functions. If the goal is to incentivize workforce being actually able to purchase the homes, while there are no income limitations this would be intended to allow for younger or lower income people to potentially have housing and work in town or within the county.

After some discussion, the Board was in general consensus that Height and Parking reductions should not be an incentive for this type of development with Mr. Elder noting that it will be important to park these types of developments correctly.

Mr. Ferguson noted that when it comes to incentives, it might be helpful to sit down and speak with the folks who actually build these types of developments.

Mr. Elder discussed the proposed square footage of the samples given and noted that the average size of a home is about half that size (2000 SF). If they are talking about first time home buyers, how much different would this look if they were to reduce the size of the units.

Chair Vaughan noted that they are not requiring them to build a certain size unit and there is a minimum size of 800 SF which is pretty small.

Mr. Elder agreed with Mr. Ferguson asking, "if they build all this in words and paper is anyone going to want to build it"?

Ms. Harrison stated that she would prefer that the Town "get what they want and if nobody wants to build it then we may have to modify; the developers will come and tell us".

Ms. Lambert agreed stating that this was their opportunity to come up with something they like so "let's do it right so two years from now they are not stuck approving something we don't want to approve. If they have no takers, they can always revisit".

Chair Vaughan noted that they should focus on the definitions and the density issues.

The Board discussed and agreed on using fee reductions as incentives but reiterated that they did not want height or parking reductions. The Board also discussed how disability and retired workers fit into this type of development and talked about adding a cap on the number of units per development.

Mr. Ferguson stated, and the Board seemed to concur, that he liked the idea of breaking it up into smaller and larger lots – look at large vs. small developments, providing incentives for building small clusters of units, de-incentivizing large-scale development and requiring more amenities if you have a larger property – more green space, playgrounds, etc.

Ms. Wyatt reminded the Board that this would only affect the C2 District.

August 30th, 2023, Director's Report

Ms. Wyatt briefly discussed her Director's report with the Board which included an update on the BOA meeting held in August as well as the Holiday Market Dates for Dowdy Park.

Planning Board Members' Agenda

None

Planning Board Chairman's Agenda

None

Adjournment

A motion to adjourn was made by David Elder. The time was 12:22 PM.

Respectfully submitted,
Lily Campos Nieberding