
**Town of Nags Head
Planning Board
October 17, 2023**

The Planning Board of the Town of Nags Head met on Tuesday, October 17, 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, Meade Gwinn, Gary Ferguson, Kristi Wright, David Elder

Members Absent

None

Others Present

Kelly Wyatt, Joe Costello, 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 September 19, 2023, meeting. David Elder moved to approve the minutes as presented; Meade Gwinn seconded, and the motion passed unanimously.

Action Items

Consideration Of A Subdivision Waiver submitted by Quible and Associates, PC on behalf of Ronald and Sabrina Mikita, for the proposed two-lot Minor Subdivision of Parcel 007323000, PIN 071811556240. The requested waiver is from Section 10.47 of the Unified Development Ordinance as it pertains to limiting access to US 158, US64/264, NC 12, and SR 1243.

Planning Director Kelly Wyatt explained that Brian Rubino, of Quible and Associates, P.C. had submitted this Preliminary Plat on behalf of the property owners, Ronald and Sabrina Mikita, for the purposes of considering a Subdivision Waiver from the requirements of Section 10.47 as it pertains to driveways.

Appendix A, Section A.4, Definitions within the Unified Development Ordinance defines *Minor Subdivision* as, "any subdivision containing not more than four lots fronting on an existing street, not involving any new street or road extension of municipal facilities, not adversely affecting the development of the remainder of the parcel or adjoining property and not in conflict with any provision or portion of the master plan, official map or this UDO".

Upon their review, the UDO Administrator determined that the proposed two-lot subdivision is generally consistent with the requirements of the UDO, with the exception of Section 10.47 for which a waiver is being requested.

Ms. Wyatt explained that Section 4.1, Table 4.1, Development Review Procedures within the UDO sets forth the review process for Minor Subdivision as first requiring review and recommendation by the Technical Review Committee (TRC) with the ability for the UDO Administrator to then approve the final plat for recordation should all requirements be met.

In review of Article 10, Part V, Subdivision Regulations, it was noted that this proposed two-lot subdivision would not meet the requirements of Section 10.47, Limiting Access to US 158, US 64/264, NC 12, and SR 1243:

Access to US 158, US 64/264, NC 12 or SR 1243 from any lot in a new residential subdivision of land or any recombination of existing residential lots is prohibited unless and except a variance or waiver is granted pursuant to this UDO. Access to any of the above major streets shall be provided by another existing, improved public street accepted for maintenance by the Town or a local access street, collector street or environmental street in the subdivision or an access easement shown on a subdivision plat approved by the Board of Commissioners; provided, however, that maintenance and replacement of accessways is approved by the Town Attorney and is in accordance with Section 10.51.4.

Staff is of the opinion that the proposed Preliminary Plat, with the attachment of the following conditions, complies with all applicable requirements.

1. In accordance with Section 10.51.1.7 that the necessary utility easements shall be shown on the preliminary plat in advance of the Board of Commissioners public hearing on this request.
2. Appropriate water and utility easements shall be provided to each of the properties to permit utility service connections in accordance with Sections 10.64.2.2 and 10.62.5.
3. Should this application proceed forward toward individual lot development, additional existing grade and proposed grade elevation data will be required as part of the individual site development application approval process as outlined in the UDO.
4. For future residential stormwater permitting, direct discharge of runoff from the proposed impervious surfaces into the "404" jurisdictional wetlands is not permissible. Passive or active treatment of runoff should be provided in the form of a filter strip or other approved stormwater control measure.

Ms. Wyatt presented for the Board a Plat that had been submitted the day prior to the meeting which addressed some of the conditions which include the necessary required easements which are now shown along the perimeters of each of the proposed lots.

Ms. Wyatt noted that proposed Lot 1 is approximately 1.55 acres in area and currently has an active building permit for the construction of a single-family dwelling on it. Proposed Lot 2 is approximately 2.11 acres.

Section 4.28 of the UDO, Subdivision Waivers, states the following:

Where the Planning Board finds that, due to the special circumstances of a particular plat, the provision of certain required improvements is not requisite in the interest of public health, safety and general welfare or is inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed subdivision, it may recommend and the Board of Commissioners may waive such requirements subject to appropriate conditions. Any decision of the Board of Commissioners must be rendered by a simple majority of those members present and constituting three-fourths of the total membership of the Board. Waiver requests shall be handled in accordance with the procedures established in Section 3.13, Procedures for Quasi-Judicial Hearings.

In granting such waivers, the Planning Board may recommend, and the Board of Commissioners may require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements so varied or modified.

Ms. Wyatt explained that both lots contain a significant area of 404 Wetlands as shown on the proposed Preliminary Plat, the USACE Wetlands Jurisdictional Determination, and the accompanying Wetland Exhibit provided by the applicant.

Any future development of a dwelling on Lot 2 would require the installation of a driveway onto SR 1243/S. Old Oregon Inlet Road, thus creating the need for a waiver from Section 10.47 of the UDO. The applicant has included a statement in their application noting that any future siting of a dwelling on Lot 2 would be done so in such a way to utilize existing uplands on the site and a shared driveway option would create significantly more wetland impacts than the careful location of a second stand-alone driveway. This is the basis for their subdivision waiver request.

As Ms. Wyatt previously noted, a request of this nature would typically be considered a Minor Subdivision and approved Administratively, however, the need for a Subdivision Waiver elevates this request to a Quasi-Judicial process. This requires review and recommendation by the Planning Board and a Public Hearing to be held by the Board of Commissioners.

Staff is of the opinion that the requested subdivision waiver is consistent with Section 4.28.1, Waivers Generally and is consistent with the goals of the Comprehensive Plan to maintain and protect natural areas and ecosystems to the greatest extent possible. If the Subdivision Waiver is granted, the development of Lot 2 would remain consistent with the Comprehensive Plan Residential designation with low-density single-family development.

Ms. Wyatt noted that she as well as Brian Rubino and Christiana Tambone from Quible were available to answer any questions for the Board.

Mr. Elder noted that there is a way, over time, to fill in wetlands and dry out a property and eventually create dry land by first creating a pond then drying it out and filling it. Mr. Elder expressed concern about possibly allowing a precedent noting that he has seen it happen in other areas.

Brian Rubino with Quible & Associates confirmed for Mr. Elder that there is a process to dig a pond in 404 Wetlands but would require a permit from the Army Corps as well as certification from Division of Water Resources at the state level. Mr. Rubino noted that as far as eventually filling that pond that would also require several layers of permits and would a pretty extensive process.

Mr. Rubino confirmed for Mr. Ferguson they would be filling about 5000 SF for the new home site if the subdivision is approved. They are amending the permit they received from the Army Corps for Lot

1 to include the additional fill for Lot 2. Mr. Rubino noted that this was the Army Corps preference because they would be filling less wetlands this way.

Mr. Rubino confirmed for Mr. Ferguson that they do not yet have an official proposed site plan for Lot 2 but the proposed lot coverage will most likely be less than 10% of the lot.

Ms. Wyatt confirmed for Mr. Ferguson that they can use wetlands as part of the lot coverage calculations.

Meade Gwinn moved to recommend approval. Molly Harrison seconded, and the motion passed unanimously.

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.

Ms. Wyatt presented some text amendments to the Unified Development Ordinance submitted by SRE Mustang, LLC (Outlets Nags Head) 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, General Provisions of the Unified Development Ordinance, specifies the uses that are allowed to be included as part of various types of Commercial Mixed-Use designations and 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 staff is of the opinion that Drive Through restaurants were specifically not included for mixed-use developments because of the potential for traffic impacts, congestion, emergency vehicle access and other issues of this nature.

Currently drive-through restaurants are only allowed in the C-2, General Commercial Zoning District with supplemental regulations that are spelled out in Section 7.29 of the Unified Development Ordinance.

In addition to the applicant's request to amend Section 7.32 of the Unified Development Ordinance to list the use "Restaurant, Drive-Through" as a permissible use within Commercial Mixed-Use designations, the applicant has also proposed to amend the supplemental regulations found within Section 7.29 of the UDO. The proposed revised language was provided as part of the Staff Report.

Staff would note 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 drive-through restaurant (Starbucks) within an existing shopping center/group development (Outlets Nags Head). The applicant is aware that any site-specific site plan approval is contingent upon the adoption of this text amendment.

Ms. Wyatt noted that the 2017 Comprehensive Land Use 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, including the Corridors Character Area, the list of generally appropriate land uses specifically spells out that "drive-thru restaurants" are not desirable.

Based upon their analysis, Staff would recommend denial of the proposed text amendment to allow drive-through restaurants as an acceptable use within commercial mixed-use developments, including shopping centers.

Ms. Wyatt noted that she as well as attorney Crouse Gray, representing the shopping center, Outlets at Nags Head were available to answer any questions for the Board.

Mr. Gray addressed the Board. Mr. Gray explained the applicant's proposal and confirmed that the ultimate goal was to put a Starbucks with a drive through at the Outlets Shopping Center. Mr. Gray stated that the ordinance does allow a drive-through in the C-2 zoning district, noting that the Town could have prohibited the use everywhere. They are proposing some language which limits the area in which a drive-through can be, with Mr. Gray noting that with what they are proposing, there is no other area in the Town (other than the Outlet Mall) that would meet the requirements that they are proposing. Mr. Gray then reviewed some Land Use policies which he felt were in harmony with what they are proposing and reminded the Board that they are trying to add something where they already have commercial facilities.

Mr. Gray confirmed for Mr. Gwinn that the Starbucks model, what they are moving towards, is drive-through restaurants.

Mr. Ferguson questioned the legality of what they were proposing noting that by putting such limitations on the text amendment it felt like spot zoning; "the amendment just seems to focus too much on one piece of property".

Mr. Crouse noted that it's not infrequent that towns or counties do adopt ordinances where the language restricts uses to specific areas and the can also put conditions that even restrict it further.

Ms. Wyatt confirmed for Ms. Lambert that Staff had received letters from some of the Outlet Mall tenants saying they had not seen any issues with the parking lot being full and welcomed a Starbucks to the shopping center.

Mr. Elder stated that he recently learned that DOT notes that between 65 and 80% of all traffic accidents are caused by people consuming beverages while in their vehicles and stated that Emergency Services needs would be atypically high because of the nature of the business. Mr. Elder reiterated his previous position that he is not in support of allowing drive-throughs because they add to safety concerns that already exist.

Ms. Harrison stated that they have it in the UDO that the Town doesn't want drive-throughs and noted that the proposal seemed too narrow an allowance for one business and unfair to other businesses in Town that would not have the same opportunity; what if Front Porch wanted a drive-through?

Chair Vaughan agreed noting that the Land Use plan promotes and encourages small local businesses, and this would not do that and that this fact needed to be a consideration as well.

Ms. Lambert agreed with Ms. Harrison and Chair Vaughan noting that they have to answer to their constituents and that this proposal seems very site specific and very much like (playing) favorites and feels very unfair.

Megan Lambert moved to recommend denial of the proposed text amendments. David Elder seconded, and the motion passed unanimously.

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.

Ms. Wyatt explained that at their October 4, 2023 meeting, the Nags Head Board of Commissioners adopted an ordinance which would allow existing brick and mortar retail jewelry stores to host temporary events whereby precious metals dealers can locate and operate within the store for a period not to exceed 90 days within any calendar year. In addition to this amendment, it was the consensus of the Board of Commissioners to ask Staff to draft the necessary revisions needed to expand the items acceptable for appraisal and purchase beyond that of just precious metals to other items as well, for the Planning Board's consideration.

Ms. Wyatt noted that North Carolina General Statute Article 45, Section 66-387 defines various types of business transactions related to the purchase of secondhand goods from the public. As defined by the statute, "Currency Converter" also called "Cash Converter" would encompass the activity that has been requested for consideration.

Currency converter. – Either (i) a person engaged in the business of purchasing goods from the public for cash at a permanently located retail store or (ii) an itinerant merchant as defined in G.S. 66-250(1) who holds himself or herself out to the public by signs, advertising, or other methods as engaging in that business.

Staff would note that while the initial text amendment request was made on behalf of a business owner operating within the Town of Nags Head, seeking to do business with an entity who appears to be a highly reputable vendor (National Rarities), text amendments are not site specific, rather they become available to any business meeting the adopted criteria (ex: existing retail jewelry stores). When moving beyond the parameters outlined for Precious Metals Dealers, staff does not have the ability to regulate the types of items being brought in by the public for appraisal and potential purchase.

On their website National Rarities states that they currently buy fine jewelry, scrap gold and silver, diamonds, watches, coins, currency, and bullion, rarities, fine art and luxury goods, firearms and "so much more". While staff cannot regulate the types of items that may be taken to such an event for appraisal and purchase; and while staff must enforce any activity of this nature through the statutory requirements of "Currency Converters", we can apply the terminology of "Antique and Collectibles Dealer" as it pertains to the proposed text amendment, if so desired by the Planning Board and Board of Commissioners respectively.

Currency/cash converters may also be referred to as secondhand goods dealers. While pawn shops and cash converters are both businesses that deal with secondhand goods, there are differences in the two regarding their business operations. Primarily, pawn shops provide collateralized loans, taking temporary ownership of an item and holding it until the customer repays the loan. If the loan is

not repaid, the pawnshop may then sell the item. Currency/cash converters do not provide loans, they focus on immediate purchase transactions.

Ms. Wyatt reviewed the draft ordinance for the Planning Board's consideration noting conditions that would need to be met if they were to allow the use and includes provisions for outdoor storage of larger antique items such as boats and automobiles. Staff believes the draft ordinance reflects the Board of Commissioners request.

Mr. Wyatt confirmed for Ms. Harrison that while they were looking at it from the lens of what the applicant had presented the amendment does open it up to any retail Jewelry shop and any licensed precious metal dealer.

Ms. Wyatt noted that cash converters do not have to have the same law enforcement agency permit as a precious metal dealer does. Ms. Wyatt noted that other names for Cash Converter are pawn shop, secondhand shop, buy-sell-trade, etc.

Ms. Harrison noted that it's just giving a fancier name to something that they already reviewed and said No to.

Ms. Wyatt confirmed for Chair Vaughan that the 90-day timeline would remain unchanged.

Ms. Wyatt confirmed for Mr. Gwinn that precious gems are included as part of precious metals.

Ms. Wyatt confirmed for Mr. Ferguson that this request came as a directive from the Board of Commissioners.

Ms. Wyatt confirmed for the Board that firearms and artwork are among the items that some Precious Metals dealers purchase.

Chair Vaughan noted that 90 days is a lot and could mean that someone was operating this use for three continuous months during the season.

Ms. Wyatt noted that they pulled the 90 days from COVID times when Staff were issuing temporary use permits every 30 days not to exceed 90 days.

The Board discussed reducing that time but ultimately agreed that enforcement, even of the 90-days could be difficult. The Board also discussed the purchase of firearms but agreed that it would be difficult to allow certain antiques and collectibles and not others.

Mr. Ferguson expressed concern that this proposed ordinance would open the door to pawn shops, and this is exactly the direction the Town would be going in; adding firearms to the mix complicates matters even further.

Mr. Elder agreed with Mr. Ferguson noting that he was not in favor of the proposed amendment due to the potential for it to get broad.

After some further discussion Gary Ferguson moved to recommend denial with their noted concerns. David Elder seconded the motion and the motion passed unanimously.

Report on Board of Commissioners Actions – October 4th, 2023

Ms. Wyatt gave an update on the Board of Commissioner Actions, of note: Ms. Wyatt introduced new Deputy Planning Director Joe Costello; a Public Hearing was held, and the Board adopted the ordinance re: pawn shops and pawn brokers as presented - it was Board consensus to direct staff to continue to review and find a way to address the additional uses to be offered; Electrician Daniel Parsons came to Town Hall and will be giving Staff a quote for two EV chargers to be located within the Town Hall parking lot; the Board approved the site plan for the hotel (Inn at Whalebone) with the condition that the existing roadway is to be expanded to accommodate three (3) lanes of traffic, and the three (3) lanes should extend to the most westward entrance of the hotel off Lakeside Street; the Board appointed Rob Crawford (formerly with Dare County Environmental Health) as a member of the Town's Septic Health Advisory Committee; the Board authorized the Manager to execute the Interlocal Agreement with Dare County to work together on the EMS/Fire Station Project – and to execute the Lease Agreement at the appropriate time when a site plan has been prepared; Town Manager Garman provided an update on the results of the recent Community Survey. Approximately 1,136 responses have been received and a draft report from the consultant is to be presented to the Board at its November 1st meeting.

Town Updates

Ms. Wyatt gave the Board an update on the Epstein Street Beach access redevelopment.

Discussion Items

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

Ms. Wyatt explained that following the discussion at the Planning Boards September 19th meeting, planning staff had provided the following updates/revisions:

- Created new standards and regulations for "small" multi-family developments and standard multi-family developments. The proposed standards for small multi-family developments are less stringent than those for standard developments in an effort to incentivize the small pockets of multi-family development.
- Proposed to limit all standard multi-family developments to a maximum of 60 units.
- Proposed a limit of no more than four (4) units per multi-family dwelling building and a building separation of 10 feet.
- Added language to the proposed definition of workforce housing to include remote work.

Ms. Wyatt noted that there are several areas of the proposed ordinance that will need additional discussion by the Planning Board and were highlighted in the Board packet. Ms. Wyatt reviewed these for the Board and included height standards, units per building, maximum unit size, buffering requirements, architectural design requirements and provisions for outdoor amenities.

Deputy Planning Director Joe Costello provided a PowerPoint presentation regarding lot size and potential density based on previous conversations by the Planning Board and

It was consensus of the Planning Board that they liked the small multi-family option provided and agreed that they preferred Townhome style development over apartment style development. However, the Board requested direction from the Commissioners about whether they should include or exclude apartment style development. The Board also requested additional information on deed

restriction language and architectural design standards for both small and large multi-family developments.

September 27th, 2023, Director's Report

Ms. Wyatt briefly discussed her Director's report with the Board which included an update on the Dowdy Park upcoming Holiday Markets.

Planning Board Members' Agenda

Mr. Elder discussed a possible upcoming change to 100% septic repair area.

Ms. Harrison would like the Board to revisit the Hotel Overlay District.

Planning Board Chairman's Agenda

None

Adjournment

A motion to adjourn was made by David Elder. The time was 12:17 PM.

Respectfully submitted,
Lily Campos Nieberding