

**Town of Nags Head  
Planning Board  
July 20th, 2021**

The Planning Board of the Town of Nags Head met on Tuesday July 20th, 2021, in the Board Room at the Nags Head Municipal Complex.

Planning Board Chair Megan Vaughan called the meeting to order at 9:00 a.m. as a quorum was present.

***Members Present***

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

***Members Absent***

None

***Others Present***

Michael Zehner, Kelly Wyatt, Holly White, Lily Nieberding, Kate Jones, Margaux Kerr

***Approval of Agenda***

Chair Vaughan asked for a motion to approve the agenda. David Elder moved to approve, Meade Gwinn seconded, and the motion passed unanimously.

***Public Comment/Audience Response***

None

***Approval of Minutes***

Chair Vaughan asked for a motion to approve the minutes of the June 15, 2021, meeting. Meade Gwinn moved to approve the minutes as presented, David Elder seconded, and the motion passed unanimously.

***Action Items***

***Consideration of an SED-80 Zoning District Site Plan for 468 W. Villa Dunes Drive required by the requested removal of trees greater than 16" in caliper***

Deputy Planning Director Kelly Wyatt presented an SED-80 Site Plan Review on behalf of Applicant Louisa Farr for the purpose of requesting approval of a site plan for a property in the SED-80, Special Environmental District, required by the requested removal of three (3) trees that exceed a 16-inch caliper. The property is located at 468 W. Villa Dunes Drive and is currently vacant. The property is split-zoned between SPD-20, Special Planned Development and SED-80, Special Environmental District. Entirety of work to occur within the SED-80 District.

The property is in an X Flood Zone and AE-5 immediately adjacent to the Sound; per the Town local ordinance, the property is subject to an RFPE/LES of 9'.

Ms. Wyatt noted that the town's Comprehensive Plan Future Land Use Map designates this property as a Conservation area. Additionally, the property is located in the Significant Natural Areas Character Area, and specifically Nags Head Woods. Single Family Residential is identified as an appropriate land use within the Nags Head Woods Significant Natural Areas Character Area.

The lot in question is approximately 4.06 acres in area, with approximately 475' of frontage along the Roanoke Sound. Due to the location of the lot adjacent to the Sound and its unique natural features, which include rolling topography and a diverse variety of large trees, the property is subject to numerous regulatory requirements, including CAMA requirements, Army Corps of Engineers wetland regulations, local zoning regulations, erosion and sedimentation control regulations and Dare County Health Department requirements pertaining to the location and operation of the septic system.

The SED-80 zoning district provides for development requirements in addition to the standard development requirements, which the proposed site plan does meet. Additionally, the District provides for additional standards including design standards. Ms. Wyatt noted that the proposed site plan meets all site design standards, with the exception of the following:

**8.4.3.4.2.3.** The removal of any tree with a caliper sixteen (16) inches or greater is prohibited, whether or not they fall within any building site, septic area, driveway, road or utility easement, except as provided in subsection 8.4.3.4.3.1.3 of this section.

Ms. Wyatt explained that pursuant to Section 8.4.3.4.2., Site Design Standards, the provided design criteria... "shall be satisfied, except where the Board of Commissioners finds an alternative design scheme which provides equal or better performance standards regarding the intent of this UDO and to protect the natural features of the SED-80 district protected under this section."

Section 8.4.3.4.3., Standards of Review and Approval Procedure; Intent and Purpose, and subsections, and specifically Section 8.4.3.4.3.1.4., provide the standards for review of the subject request. The Section and subsection were provided as part of the staff memorandum.

To summarize, the Applicant is seeking to remove three (3) trees greater than sixteen (16) inches in caliper. In reviewing the request, the Planning Board and Board of Commissioners shall consider, in light of the requested removals:

- Whether the proposed building site is the most suitable in that it is in areas requiring the absolute minimum alterations of the natural vegetation, topography, and groundwater systems.
- Whether existing unforested land exists that would be considered the most suitable building site unless development of such area would threaten the health of vegetation by stimulating dune migration or cause extensive salt mist intrusion into the Woods or would involve alterations or development prohibited elsewhere in this section.
- Whether the building site, given the removal of trees, is the most suitable in that it disturbs the minimum number of healthy trees and vegetation, with consideration to the density, height, and variety of the vegetation to be removed, with the goal to preserve those forest stands which provide the most protection from storm and salt spray.
- That there is no reasonable alternative building site and/or supporting facilities can be located on a lot OR the removal is necessary to construct proposed improvements as a result of: need for access around the proposed structure for construction equipment; need for access to the building site for construction equipment; essential grade changes; surface water drainage and utility installations.

- Whether, based upon an evaluation of the topography of the site, all structures will be constructed below the canopy of existing tree cover.

The Applicant has noted the following with respect to these standards within the application:

*This is a densely wooded lot and the construction envelope has been carefully selected to avoid tree removal to the maximum extent practical, while using a location that also minimizes site grading to conform to development standards within SED-80. As labeled on the Site Plan, each of these three trees are pines.*

*If the subject trees are not removed, they would pose a safety hazard to the owner and to the structure to be built. We have met Town Staff on-site along with the Owner and General Contractor to review the building envelope, driveway and septic location that are staked and to discuss this tree removal request. This single-family residential plan has been designed with tree preservation and topographic conditions in mind.*

Upon review, Staff found that the subject site is heavily wooded. While the applicant is proposing to remove these three (3) trees, the siting of the proposed home is such that numerous other trees of similar size are retained and preserved. Staff is of the opinion that the proposed building site is the most suitable given the minimization for alterations to the site's various natural conditions; that there is generally no unforested land on site that would be viable for development; that the proposed building site is the most suitable in that it disturbs a minimum number of healthy trees and vegetation, and favors the preservation of a variety of trees species over the preservation of the subject pines, which provide the most protection from storm and salt spray and maintain the unique natural diversity of the plant species in Nags Head Woods; that alternative building sites are less than reasonable compared to the proposed building site; and, that at least with respect to two (2) of the trees, removal is necessary to construct proposed improvements as a result of need for access around the proposed structure for construction equipment and need for access to the building site for construction equipment.

Ms. Wyatt noted that based upon a review of the application and the inspection and analysis of the property Staff would recommend approval of the Site Plan as presented, allowing for the removal of the three (3) subject trees. Ms. Wyatt then presented a site plan of the property noting that in addition to the 16-inch caliper trees that require Board approval, it also asks that the Board take into consideration those trees that are over 4 inches in caliper. Ms. Wyatt stated that while those can be approved administratively, when looking at the design proposal as a whole it is important to note where all of these trees are.

Mr. Ferguson inquired about the health of the three subject trees.

Engineering Technician Kate Jones addressed the Board and explained that while they do not seem to be dying or diseased, due to their proximity to the sound and exposed to that much wind, and because pine trees are the weakest trees, they could pose a hazard and it's not unreasonable to request their removal. Ms. Jones noted that there are several hardwood trees that would be retained.

Mr. Elder inquired about what happens if someone takes down trees without seeking approval/permit? How is this handled by the Town?

Planning Director Michael Zehner stated that there is nothing in the ordinance that addresses this issue; depending on the circumstance, they may be required to replant. Mr. Zehner noted that the live oak ordinance does requires replanting.

Mr. Elder expressed concern that the ordinance also does not address pruning a tree in such away that ultimately causes its' demise. Mr. Elder also discussed tree removal as it relates to stormwater.

Mr. Zehner noted the importance of preserving and protecting the remaining vegetation and encouraging contractor and property owner awareness.

Per Chair Vaughan's request, Ms. Wyatt discussed further the trees that are over 4 inches in caliper and their relevance to the proposal.

Ms. Wyatt confirmed for Ms. Wright that what is proposed was the best layout of the driveway given the location of the wetlands and with the least amount of disturbance.

Brian Rubino, Engineer with Quible, addressed the Board. Mr. Rubino stated that they had met several times with Staff on-site while designing the proposal, as well as Coastal Management and the Army Corps. The building envelope they are proposing is the best place to build because there are fewer trees and it's a flat surface, so there will be minimal grading. They designed the driveway in such a way to minimize grading and tree removal. The property owner, Louisa Farr's priority was preserving as many heritage/large trees as possible. Mr. Rubino noted that the are a mixed variety of trees on the property, hundreds of trees that are healthy and will not be removed. They are proposing a modest, four-bedroom house, smaller than most of the houses in the area, and it was designed to remove the least number of trees possible.

Mr. Rubino confirmed for Mr. Ferguson that all development will fall outside the 75' AEC so they will not need CAMA approval.

The Board agreed that they were in favor of the proposed site plan and that the applicant had done a good job in preserving vegetation.

David Elder moved to recommend approval of the site plan as presented. Kristi Wright seconded the motion and it passed by unanimous vote.

*Consideration of a text amendment to the Unified Development Ordinance allowing temporary accommodations for outdoor dining*

Planning Director Michael Zehner explained that as previously relayed to the Planning Board, the Board of Commissioners discussed temporary outdoor dining at their meeting on May 5, 2021, indicating their support to allow for the continued issuance of Temporary Use Permits until November 28, 2021, should the declared state of emergency be lifted. The Board additionally asked Staff to work on a text amendment to allow temporary allowances for outdoor dining regardless of a declared state of emergency.

At present, the issuance of a Temporary Use Permit for a temporary use or the temporary modification of a use is only eligible during a declared State of Emergency (or due to the impacts associated with a declared State of Emergency).

In speaking with restaurants about the extension, several indicated they were interested in continuing this on a temporary basis year in and year out. Currently restaurants wanting to have outdoor dining

would have to modify their site plan and possibly be subject to Board review as it would be considered a permanent change in the use. Staff wanted to come up with solution and amend the UDO to allow outdoor dining on a temporary or seasonal basis in a more flexible and simplified manner.

Staff is of the opinion that the provisions could be easily modified to allow for Temporary Use Permits to be issued at all times, for limited durations, for limited use types (at least initially, outdoor dining), and subject to certain limitations (i.e. no reduction of parking, no occupancy in excess of wastewater capacity, etc.).

Mr. Zehner explained that for some restaurants (who were issued a Temporary Use Permit) this meant reducing the customer service area indoors in order to allow for outdoor dining. Similarly, a restaurant wanting a Temporary Use Permit (outside a State of Emergency) could do the same.

Mr. Zehner reviewed the operative provisions for a Temporary Use Permit that are contained in the UDO noting that based on Board discussion they could be modified as necessary, for example the duration of the permits.

The Board discussed the duration and extension of Temporary Use Permits with Mr. Zehner noting that if they are able to be consistently extend or renew (the permit) it would no longer be considered a Temporary Use.

Ms. Harrison – if we are doing temporary permits every year, shouldn't we make it easier for them to get a permanent approval? Mr. Zehner explained that a Temporary Use permit would allow restaurants to try it out without making a commitment.

Mr. Zehner confirmed for Ms. Lambert that five restaurants currently have active temporary permits: Lucky 12, Red Drum, Owens, Old Nags Head Café and Millers. Mr. Zehner also explained that in the case of Waveriders it is a little different because they are using part of their parking for seating, but there is no actual outdoor service.

Mr. Zehner confirmed for Ms. Wright that the reason for regulating outdoor dining is due to parking and septic health regulations.

Mr. Zehner explained for Mr. Ferguson that early in the pandemic the Health Department came out with outdoor dining regulations stating that you couldn't have it over an active drainfield. If a site plan is necessary, they would first need to get Septic Health approval.

Mr. Zehner confirmed for Mr. Ferguson that they require floor plans to show how a restaurant plans to reduce their indoor customer service area to allow for outdoor dining if necessary. Mr. Zehner also confirmed that there is no difference between a parking standard for outdoor or indoor dining, parking is based on customer service area.

Mr. Ferguson stated that maybe they could look at parking indoor and outdoor dining differently.

Mr. Zehner noted that for "Neighborhood restaurants" such as Tortuga's their outdoor dining has a different parking standard, the intent being to encourage walking and biking.

Chair Vaughan stated that she didn't understand the need for temporary permits, why not permanently change the use? She also noted that 90 days did not seem long enough if someone wants to do it and capture the season.

Mr. Gwinn stated that a temporary use permit would allow a restaurant owner to experiment, see if customers are interested before investing in making the use permanent. Mr. Gwinn agreed that 90 days may be too short.

Ms. Lambert agreed stating that the "season" is lasting longer.

Mr. Zehner stated that the alternative to a temporary use permit would be to allow outdoor dining as an accessory use and put it in the supplemental standards but then it wouldn't be permitted on an annual basis therefore it would be harder to track and enforce. The Board was in agreement that this might not be a better alternative.

Mr. Zehner confirmed for Mr. Gwinn that the ultimate objective is to provide for flexibility.

Mr. Zehner and the Board discussed the possibility of a hybrid of the two options; maybe a temporary use permit in cases where they want to use their parking lot.

Mr. Zehner confirmed for Mr. Ferguson that the ordinance does state that a parking area shall be used for no other above ground purpose. However, Mr. Zehner noted that putting customer service area in a parking area would not conflict with this rule as long as the ordinance makes provisions to allow for it.

Chair Vaughan noted that they need to be aware of what happens long term; moving forward, once the State of Emergency has been lifted, people may not be as vigilant. Chair Vaughan also suggested limiting the number of times a temporary use permit is issued before it becomes permanent.

Mr. Elder noted that a temporary use permit that is renewed and signed for would seem to put the onus more on the applicant to make sure they are following the necessary requirements. Mr. Zehner confirmed that if someone were to violate a temporary use permit it could result in a notice of violation.

Mr. Zehner stated that he would take the Board's feedback and revise the proposal to bring back at a later date.

#### Consideration of adoption of the Town of Nags Head CAMA Land Use Plan

Principal Planner Holly White explained that the Coastal Area Management Act ("CAMA") requires each of the 20 coastal counties to adopt and receive approval of a land use plan ("CAMA Land Use Plan") developed in accordance with guidelines established by the Coastal Resources Commission, as outlined in the attached Matrix for Land Use Plan Elements.

While not a requirement of CAMA statutes or regulations, the Town and most communities have established that the locally adopted Comprehensive Plan would also serve as the community's CAMA Land Use Plan. While the Town's Comprehensive Plan is not a regulatory document, the Division of Coastal Management may use the Town's CAMA Land Use Plan as the basis to approve or deny CAMA permits.

The Nags Head Comprehensive Plan is an official policy document adopted by the Town of Nags Head to strategically plan for and enhance the quality of life and physical character of the community. The Comprehensive Plan was adopted by the Board of Commissioners on July 5, 2017.

The Town has been working with Division of Coastal Management ("DCM") staff since 2019 to pursue adoption and certification of the Comprehensive Plan as the Town's CAMA Land Use Plan. Attached to Ms. White's staff memorandum was a flow chart that explained the certification process.

Ms. White noted that while this has been a lengthy process, Staff has addressed all comments and requested changes issued by DCM and associated agencies in the review of drafts and is able to move forward with the certification process.

Certification of the Town's CAMA Land Use Plan requires the Town's adoption of the draft Plan. Upon review and recommendation by the Planning Board, a public hearing on the Plan will be requested to be held at the September 1, 2021, Board of Commissioners meeting. Following the Board of Commissioners approval of the draft Plan, the Plan will be submitted to DCM for certification.

Ms. White noted that most changes to the Comprehensive Plan requested by DCM were related to grammar, spelling, pagination, numbering, organizational titles, general clarifications, and technical corrections to the matrix. A summary of the significant changes by section was outlined in Ms. White's staff memorandum.

Staff recommends approval of the draft CAMA Land Use Plan and authorization to submit for certification.

Ms. White confirmed for Chair Vaughan that there weren't any major shifts in policy.

Mr. Ferguson inquired if CAMA is able enforce policy in areas that are outside of the AEC (Area of Environmental Concern).

Ms. White noted that for CAMA, the CAMA Land Use Plan is a regulatory document but for the Town's purposes it's simply a policy document. Mr. Zehner further clarified that the DCM can only regulate projects in areas where a (CAMA) permit would be required. Mr. Zehner stated that this was clarified as part of the certification process.

Mr. Zehner reminded the Board that it was important to note that following certification of the Town's CAMA Land Use Plan, it will be necessary for the Planning Board and Board of Commissioners to readopt the Town's Comprehensive Plan, incorporating the changes made to the Comprehensive Plan through the CAMA Land Use Plan certification process.

David Elder moved to recommend approval as submitted. Molly Harrison seconded the motion and it carried unanimously.

*Consideration of a text amendment to the Unified Development Ordinance pertaining to lot coverage associated with recycling dumpsters*

Mr. Zehner reminded the Planning Board that the Board of Commissioners had recently adopted an amendment to the Unified Development Ordinance to address the siting of dumpsters, exempting associated lot coverage in certain instances.

When discussing this amendment, the BOC requested that Staff also pursue a similar exemption for lot coverage associated with dumpsters for recyclables.

The circumstances associated with recycling dumpsters is slightly different than those associated with the former text amendment, as there is no requirement that recyclables be separated, and therefore no requirement that a dumpster be provided. However, Staff perceived that the intent of the majority of the Board was to remove potential barriers to recycling, where lot coverage limits may preclude a property owner from being able to locate a dumpster on a property.

Mr. Zehner noted that it was important to discuss the policy considerations as there are a number of policies in the Comprehensive Plan that talk about the value of recycling. While the Comprehensive Plan also includes policies valuing lot coverage limits, Staff is of the opinion that those are perhaps intended to address the development intensity or density of uses directly, rather than solid waste collection, and specifically recyclable collection aspects of a developed site.

Mr. Zehner also stated that it was important to note that while potentially exempted from lot coverage limits, such areas would still be subject to location limits as well as stormwater regulations.

Staff is of the opinion that an associated amendment would be consistent with the Town's adopted Comprehensive Plan and would be reasonable and in the public interest.

Mr. Zehner reviewed two (2) ways to amend the UDO to accommodate an exemption from lot coverage for dumpsters used for recyclables:

The first option involves amending the recently adopted provision for dumpsters, Section 8.6.6.7.6. to include: "This exemption shall also apply in the same manner to the siting of dumpsters for recyclables, where a dumpster for the collection of recyclables is proposed to be located on property".

Mr. Zehner's concern with this option is that there are a lot of caveats where trash dumpsters are concerned that would not apply to recycling dumpsters and might therefore be confusing.

Alternatively, a Section 8.6.6.7.7. could be added, as follows:

For the siting of a dumpster for the collection of recyclables, any additional lot coverage in excess of the maximum allowable lot coverage and necessary to meet the Town's minimum requirements for a dumpster pad, as determined by the Public Works Director or his/her designee, shall be exempt from the lot coverage requirements of this UDO.

Mr. Zehner confirmed for Ms. Lambert that they could use a parking space as long as they could still meet the parking regulations; dumpsters would not be exempt from the parking requirement.

Mr. Ferguson expressed concern about cumulative lot coverage reductions in general and how they can affect stormwater issues.

Mr. Zehner reminded the Board that just because they are exempt from lot coverage this proposed amendment would not exempt dumpsters from Stormwater review.

Mr. Ferguson would like to see the Town reduce the lot coverage allowance as he believes it's the source of the flooding issues. Mr. Ferguson is concerned about the direction the Town has taken with regards to lot coverage allowances.

Ms. Lambert stated that she has seen a huge improvement in drainage issues with the cleaning of the ditches and the reclaiming of the swales project.



Mr. Gwinn agreed with Ms. Lambert noting that there are other things that can be done to mitigate stormwater - lot coverage is not the only source of Stormwater.

Mr. Zehner stated that there are multiple variables such as the rising of the water table and more frequent and extreme weather event.

Acting Town Manager Andy Garman addressed the Board and explained that the standards for lot coverage have been the same for a very long time. There have been little changes over the years, but it might be good to bring a report back to the Planning Board to educate them on changes that have been made over time.

Ms. Lambert suggested, and Chair Vaughan agreed that it might be a good idea to have Town Engineer David Ryan come and speak to the Board on this issue.

It was agreed that Stormwater is a multi-dimensional issue with multi-dimensional solutions. Mr. Zehner stated that Town Staff will be bringing the Stormwater Ordinance for further review/discussion at a future meeting.

After some further discussion, the Board agreed that they were in favor of moving forward with the proposal and specifically the second option (adding a separate section, Section 8.6.6.7.7.) David Elder moved to recommend approval of the text amendment. Meade Gwinn seconded the motion and it carried unanimously.

### ***Report on Board of Commissioners Actions – July 7th, 2021***

Planning Director Michael Zehner gave a report on the Actions from the Board of Commissioner's July 7, 2021, Meeting. Of note: Planner Margaux Kerr and Code Compliance Officer Ed Snyder were recognized for five years of service; there was Request for Public Hearing - Special Use Permit to operate Religious Complex in Croatan Center on the Consent Agenda; the Board took no action concerning the Low Impact Development and Stormwater Reference Manual and the Amendment of the Recommended Standard Details Manual and cancelled the Public Hearing re: UDO text amendments to update references to Stormwater, Fill and Runoff Management ordinance pending a longer conversation regarding the Residential Stormwater Program; after discussion of various items on the Planning Director's report to include sign ordinance, seasonal housing, and streetlights conversion, it was the Board consensus to take no action at this time.

### ***Town Updates***

None

### ***Discussion Items***

#### ***Discuss Whalebone Park - Phase 1 Project***

Mr. Zehner explained that Staff is in the early stages of developing a scope for a project to investigate the potential need to renovate and/or make improvements to Whalebone Park ("Park"). This project would serve as a continued implementation of the Town's *Comprehensive Plan, Town of Nags Head Parks and Recreation Plan*, and the *Nags Head Pedestrian Plan*, but recognizes that the facilities are in need of maintenance and/or upgrade, and that opportunities for additional amenities may exist.

Similar to an onsite meeting that Staff held with members of the Committee for Arts & Culture, Staff would also like to arrange for an onsite meeting with members of the Planning Board to help inform the scope for the project. For example, beyond physical improvements or changes, much of the discussion with the Committee for Arts & Culture members included the potential opportunity to improve the Park through programming and events, as well as the need to explore issues and opportunities in the vicinity of the Park, beyond the Park's boundaries, that may affect the use of the park and conversely may allow the Park to serve as a bigger asset to the Whalebone Junction area.

After a brief discussion the Board agreed on a date for a site visit, Tuesday August 10<sup>th</sup> at 9 AM.

June 30, 2021, Director's Report

Mr. Zehner presented his Director's Report to the Board. This report was shared with the Commissioners at their July 7th Meeting. The report included a Monthly Activity Report and a list of scheduled meetings; the monthly Planning & Development report; as well as updates on the Sign Ordinance Update Project; Town Workforce Housing Study; LED Conversion of Streetlights; Decentralized Wastewater Management Plan; Estuarine Shoreline Management Plan; Electric Vehicles Action Plan; Level 2 Chargers & the LID Manual.

***Planning Board Members' Agenda***

As part of Board Member's agenda, Mr. Elder and the Board discussed with Mr. Zehner the commercial permitting and inspections process and what happens when circumstances cause a deviation from what was permitted.

***Planning Board Chairman's Agenda***

None

***Adjournment***

A motion to adjourn was made by Meade Gwinn. The time was 11:45 AM.

Respectfully submitted,  
Lily Campos Nieberding