

**Town of Nags Head
Planning Board
September 21, 2021**

The Planning Board of the Town of Nags Head met on Tuesday September 21st, 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, Meade Gwinn, David Elder, Gary Ferguson, Megan Lambert, Molly Harrison

Members Absent

Kristi Wright

Others Present

Michael Zehner, Holly White, Lily Nieberding, Kylie Shephard, Margaux Kerr, Kate Jones

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 August 17th, 2021, meeting. Megan Lambert moved to approve the minutes as presented, Moll Harrison seconded, and the motion passed unanimously.

Action Items

Consideration of a text amendment submitted by Steve Pauls of Farmdog Surf School to add "Beach Recreation Equipment Rentals/Sales" as a Permitted Use within the C-4, Arts and Culture Zoning District

Planning Director Michael Zehner explained that Mark Kasten of Cahoon & Kasten on behalf of Steve Pauls of Farmdog Surf School had submitted a text amendment request to the Unified Development Ordinance (UDO), which, if adopted would permit "Beach Recreation Equipment Rentals/Sales" as a permitted use within the C-4, Arts and Culture Zoning District.

The applicant has noted in his application that the reason for this request is because he is under contract to purchase the property at 2403 Wrightsville Avenue and would like to relocate his business, Farmdog Surf School, a Beach Equipment Rentals and Sales use, from its existing location. The

applicant notes that within the current UDO, bicycle rental and general retail are both permitted separately in the C-4, Arts and Culture Zoning District.

Staff would ask that the Planning Board keep in mind that text amendments are not site specific but rather apply to the entire district in which it is being requested. Mr. Zehner noted that a map of the C-4, Art and Culture District was included in the agenda packet.

Mr. Zehner noted that the 2017 Comprehensive Land Use Plan designates this area as Neighborhood Commercial and is within the Gallery Row, Community Center Character Area. Table 2.2.2.A notes Appropriate Land Uses in the Gallery Row Character Area as Commercial uses 10,000 square feet or less, Retail and Equipment Rentals. Based upon this analysis, Planning Staff finds the proposed use is consistent with the 2017 Comprehensive Land Use Plan and the desire of this area to be a central node for community activity to include amenities and services that can meet a variety of daily needs including active and passive recreation, social interaction, education and fitness, and commercial services for residents and visitors.

Staff is of the opinion that the requested amendment is consistent with the Town's adopted Comprehensive Plan and is reasonable and in the public interest and recommends adoption of the amendment as requested. Mr. Zehner stated that he, as well as Mark Kasten were available to answer any questions for the Board.

In general, the Board was in support of the amendment with Ms. Lambert stating that the building had been vacant for a while, and it would be good to see something go in and do something with (the building). Chair Vaughan agreed stating that it seemed like it was in keeping with the intent of the area.

David Elder moved to recommend approval of the text amendment as presented. Meade Gwinn seconded, and the motion passed by unanimous vote.

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

This item came as a result of direction from the Board of Commissioners stemming from a discussion about temporary outdoor dining at their meeting on May 5, 2021. At that time the Commissioners indicated 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. Generally, the Commissioners discussed the possibility of amending the UDO to allow outdoor dining on a temporary or seasonal basis in a more flexible and simplified manner.

Mr. Zehner explained that the Planning Board initially discussed this item at their July 2021 meeting but ultimately agreed to continue the discussion and consideration of amendments. Points raised at the July 20 meeting that required further consideration were included as part of the Staff report.

As noted in a preliminary discussion with the Planning Board, Staff believes that there may be an opportunity to address this allowance through the modification of the Temporary Use Permit provisions that were adopted in 2020.

Mr. Zehner clarified that restaurants wishing to establish an allowance to provide regular or occasional serviced outdoor dining could include such a request as part of a site plan review application, or as part of a subsequent application; however, there is currently no mechanism within

the UDO allowing a restaurant to occasionally implement serviced outdoor dining without a site plan review application or without a Temporary Use Permit. Mr. Zehner also noted that he was unaware of any restaurants in town that had gone through the site plan review process in order to have periodic outdoor dining.

Currently, 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). Staff is of the opinion that the provisions could be easily modified to allow for Temporary Use Permits regardless of a State of Emergency.

Mr. Zehner proceeded to review for the Board the proposed modifications to Section 4.11.5 Temporary Use Permits which would allow for these 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.).

Staff is of the opinion that providing temporary accommodations for outdoor dining, with limits, is supported by the Comprehensive Plan, is reasonable and in the public interest, and would recommend adoption of the proposed amendments.

Mr. Zehner discussed the difference between a Temporary Use Permit and a Crowd Gathering Permit explaining that they could not be used interchangeably.

Ms. Lambert was in favor of the amendment stating that it just added to what Nags Head is.

Chair Vaughan liked the idea of giving businesses the chance to try it out (once the State of Emergency has been lifted) before making a permanent change but was glad that there were proposed limits. Chair Vaughan also noted she liked the flexibility and that it added to the "beach feel".

Mr. Gwinn agreed stating that a lot of people prefer to be outside.

Mr. Zehner confirmed for Chair Vaughan that this ordinance did not speak to presence of animals in restaurants and was not sure what the limitations are when it comes to animals and food service.

After some further discussion Molly Harrison moved to approve as presented. Meade Gwinn seconded, and the motion passed unanimously.

Report on Board of Commissioners Actions – August 4th, 2021

Planning Director Michael Zehner gave a report on the Actions from the Board of Commissioner's August 4, 2021, Meeting. Of note: on the Consent Agenda was a Consideration of amendment #2 to Beach Nourishment Capital Project Ordinance for beach sprigging which Kate (Jones) is working on; a Public Hearing to consider adoption of the Town of Nags Head CAMA Land Use Plan Update - The Board unanimously adopted the CAMA Land Use Plan Update as presented; a Public Hearing to consider a text amendment to the Unified Development Ordinance pertaining to lot coverage associated with recycling dumpsters - The Board unanimously adopted the ordinance amending the Unified Development Ordinance re: lot coverage/recycling dumpsters as presented; the Board approved the Street Lighting Policy as presented with the modification to add a bullet under "General" indicating that Town-wide fixtures require full cut-off unless there is proof that costs are significantly greater; the Board appointed ten volunteers to serve on the Estuarine Shoreline Management Plan Advisory/Steering Committee; the Board unanimously passed a motion to appoint Andy Garman as

Town Manager; The Board adopted the resolution in opposition to Senate Bill 105 re: Budget Appropriations Bill which includes environmental provisions and has the potential to invalidate certain Town ordinances and change other current regulations.

Town Updates

Chair Vaughan any updates on discussions about fire protection for large homes? Mr. Zehner noted that Planning Staff had participated in one meeting with the Fire Department, Andy Garman, Commissioner Siers and the Mayor. The next step was to have a meeting with the Home Builders (Association) but Mr. Zehner was unaware of the specifics of that meeting. Mr. Elder discussed access and Ms. Lambert noted that it was an important especially when it comes to older buildings.

Mr. Elder stated it would be good to have an idea of how many people currently live in the area. Mr. Elder noted that there have been a lot of numbers thrown out, but it would be good to know "where we are". Mr. Zehner stated that they received census data that shows that the number is going up. The Board and Mr. Zehner discussed impacts on tax collection, as well as infrastructure in general. Chair Vaughan noted that because of Covid it would be hard to sort through what is temporary vs. permanent trend. Mr. Elder and the Board agreed that the "season" doesn't stop and end like it used to.

Discussion Items

Discussion of Draft/Updated LID Manual and Residential Stormwater Regulations

Mr. Zehner reminded the Board that earlier this year planning staff had drafted and presented updates to the Town of Nags Head Low Impact Development Manual and Stormwater Reference Manual for consideration by the Planning Board and Board of Commissioners.

At their May 5, 2021, meeting the Board of Commissioners voted unanimously to table the item, in order to allow time for discussion and input from homebuilders; that meeting took place on June 16, 2021. It was the Board of Commissioner's consensus that staff work towards a simplified mechanism to address residential stormwater management concerns.

Kate Jones, Senior Environmental Planner, explained that on September 15, 2021, members of Town Staff, Town Manager Andy Garman, and Mayor Pro Tem Siers and Brinkley met with members of the Outer Banks Homebuilders Association. At this meeting staff outlined broad opportunities to transition the Town's stormwater management requirements from a volume-based approach to a point-based approach.

In short, this type of transition would move away from the need to calculate area of built upon surfaces, determine the volume of runoff as a result of 1 ½ inch rainfall event and then construct the various measures necessary to capture, retain and infiltrate a specific volume. A points-based approach would simply set forth a minimum number of points that must be achieved.

The members of the Homebuilders Association were appreciative of staff's time and interest in trying to simplify the stormwater management ordinance. As a group, the members provided feedback that they would like the Town to consider solutions that did not necessitate the need to utilize an engineer, could be simple, flexible, and more conceptual in nature while still achieving the overall goal of not shedding runoff onto adjoining properties or into the Town's right-of-way. Several homebuilders did note that they found the approach to stormwater management used by the Town of Southern Shores to be both simple and effective.

Ms. Jones noted that they (Staff) are currently looking at the Town of Southern Shores requirements to determine if any aspects of their regulations could or should be integrated into the revisions.

Staff believes that they can work towards simplified, yet effective, stormwater management regulations.

Staff intends to draft an ordinance for review and discussion by the Homebuilders prior to consideration by the Planning Board at their upcoming October 19, 2021, meeting. Additionally, as the revised stormwater management regulations are drafted, we will assess what revisions may be necessary to the LID Manual moving forward.

Ms. Lambert noted that since Hurricane Matthew in 2016, she has seen a tremendous improvement in Stormwater issues, and she doesn't want to see it go backwards in the process of making it "simple". Ms. Lambert understands that it's good for the Home Builders but also wants for it to be good for existing homeowners, especially those in older constructions.

Ms. Jones noted that this viewpoint is important and one that Staff shares; additionally, the Town does have low lying areas; South Nags Head and Southern Shores are very different. However, Ms. Jones stated that there is an opportunity to make it simpler without backsliding.

Ms. Lambert stated that there has been an improvement but "we are not there yet" as far as Stormwater goes.

Ms. Jones confirmed for Chair Vaughan that the 1.5" rain fall is a State (of North Carolina) standard, but the Town is not held to that standard because residential development is not under any State or Federal requirements.

Mr. Elder discussed Irrigation systems that function even when it's pouring down rain and inquired if this could be part of it; requiring sensors on sprinkler systems so they turn off when they sense rain. Ms. Jones noted that this this will be part of the education component.

Ms. Harrison reminded everyone that they (the Town) have not had a significant rain event lately.

Chair Vaughan agreed noting that those types of events help to remind people of the issue and the importance of Stormwater measures but it's important that people are aware of the issue at other times as well and understand how critical it is and how it ties into other issues such as septic health.

Ms. Jones confirmed for Ms. Harrison that she believes there are opportunities to make it a simpler process as well as improve it.

Mr. Elder suggested that they also look into landscaping that is put in after development is complete as well as the filling in of swales.

Ms. Jones noted that once a Stormwater Plan is in place, filling could create a violation of that plan. Ms. Jones noted that they Town currently does not have a maintenance agreement requirement and maintenance is an important component.

Ms. Jones confirmed for Chair Vaughan that Staff does go out and meet on-site with property owners that have Stormwater concerns.

Ms. Jones confirmed that one of the concerns that Staff often hears is related to the expense/cost to the homeowner; Staff is discussing the possibility of a cost share program.

Ms. Lambert agreed that Southern Shores is very different from Nags Head but was curious about their budget when it comes to Stormwater.

Ms. Jones confirmed that the line item in Nags Head's budget goes to Town ROW projects; there is no line item in the budget going towards residential stormwater.

Mr. Ferguson inquired about the Stormwater Committee. Ms. Jones noted that they have not met in several years and have not been involved in recent discussions. The Committee fulfilled its initial purpose and was disbanded. Mr. Ferguson suggested that the Committee may need to be re-activated.

Mr. Ferguson asked how does a point system surpass the volume issue? Ms. Jones clarified that Staff came up with the idea of the point system and discussed further how it works.

Mr. Ferguson noted that there are towns in other areas that have a fee that is comparable to an impact fee for Stormwater Management.

Mr. Gwinn asked how do you verify that the stormwater measures that were implemented are working? Ms. Jones noted that Staff rely on state testing and standards but when you vary from the State standard it gets more difficult to measure.

Ms. Jones confirmed for Mr. Gwinn that she was unaware if there are tax incentives to manage Stormwater on-site.

Discuss Electric Vehicle Action Plan

Principal Planner Holly White explained that there has been ongoing discussion of the promotion and advancement of electric vehicles and infrastructure in the Town for some time. The Planning Board initiated discussion of electric vehicle charging stations in June 2019. These initial discussions led to the inclusion of an Electric Vehicle Action Plan as part of the Planning & Development Department and Septic Health FY2020-2021 Strategic Work Plan, with the general goal being to support the increasing prevalence of electric vehicles.

Ms. White provided a brief overview of what has taken place since that time. A more detailed timeline was included in the Staff memorandum.

Ms. White stated that staff was contacted by representatives of Duke University Nicholas School of the Environment that were interested in developing the Action Plan for the Town, in collaboration with Planning staff.

Dr. Timothy Johnson, Chair of the Master of Environmental Management Energy and Environmental Program, and Town staff virtually met to discuss the potential project. Dr. Johnson followed up the meeting with a proposed framework and goals for completion of an Electric Vehicle Action Plan by the Nicholas School as a Masters' Project as outlined below.

Ms. White noted that on September 10th, Staff had the opportunity to virtually meet with the students and Dr. Johnson to discuss the project scope and background. During that meeting, Staff were

introduced to the students who will be working on this project (their Bios were included in the Staff memorandum). Next month, these students will begin data gathering needing to initiate the project.

Ms. White stated that she will have another more detailed update at the October Planning Board meeting but was happy to answer any questions for the Board.

Chair Vaughan noted that she was impressed by the group that will be participating in this project.

Mr. Zehner gave Mr. Gwinn and the Board an update on the search to secure a vendor arrangement and location of charging equipment on Town property.

August 26, 2021, Director's Report

Mr. Zehner presented his Director's Report to the Board. This report was shared with the Commissioners at their September 1st Meeting. The report included: important meetings of note; Updates on Whalebone Park Phase I planning, Decentralized Wastewater Management Plan, Estuarine Shoreline Management Plan, CAMA Land Use Plan, EV Action Plan, NC Resilient Coastal Communities Program, LID Manual/Stormwater Regulations, ETIPP Program, NC AIA Activate Technical Assistance project, LID Stormwater Demonstration Project and upcoming Dowdy Park Events.

Planning Board Members' Agenda

Mr. Ferguson noted that it appeared that the allowable uses in the C4 Zoning District were not art & cultural uses and did not seem to represent the intent of the district. This led to a brief Board discussion related to that District and the idea of aspirational vs. real life due to market changes.

Ms. White noted that in general, the uses in the C4 are less intense than in the C2 and the Comprehensive Plan talked about not only preserving but also enhancing the district by finding uses that were compatible.

Planning Board Chairman's Agenda

Chair Vaughan thanked Planning Director Michael Zehner for his service and wished him a Happy Birthday and Good Luck on his future endeavors.

Adjournment

A motion to adjourn was made by David Elder. The time was 10:45 PM.

Respectfully submitted,
Lily Campos Nieberding