

**Town of Nags Head
Planning Board
October 20, 2020**

The Planning Board of the Town of Nags Head met in regular session on Tuesday October 20, 2020 in the Board Room at the Nags Head Municipal Complex. The meeting also used the Zoom platform to broadcast the meeting live and allow members of the public to view it remotely.

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, Gary Ferguson, David Elder, Molly Harrison, Megan Lambert (Via Zoom)

Members Absent

None

Others Present

Michael Zehner, Kelly Wyatt, Holly White, Lily Nieberding

Approval of Agenda

Chair Vaughan asked for a motion to approve the agenda. David Elder moved to approve as presented, Kristi Wright 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 September 15, 2020 meeting. Meade Gwinn moved to approve the minutes as presented, David Elder seconded, and the motion passed by unanimous vote.

Action Items

Consideration of A Conditional Use Application submitted by Cahoon & Kasten Architects, PC on behalf of SAGA Construction and Legacy Homes Services to convert the existing commercial structure into a commercial mixed-use development consisting of a Building Contractors Office and a Furniture Store. The property is zoned C-2, General Commercial and is located at 205 E. Baltic Street.

CONTINUANCE REQUESTED

Consideration of a Text Amendment concerning the "Furniture Store" Use

Planning Director Michael Zehner explained that at the October 7, 2020 Board of Commissioners meeting, Commissioner Fuller raised an interest in having a clearer definition for the Furniture Store use as contained in the Unified Development Ordinance (UDO).

Currently, the definition of Furniture is as follows:

Furniture store means an establishment that sells goods and/or movable objects, intended to support various human activities such as seating, eating, and sleeping, for furnishing or improving housing units that make a room or other area ready for occupancy.

Commissioner Fuller suggested that the definition be something to the effect of, "a furniture store is a retail store that sells furniture to the general public; the structure may have incidental storage to the principal business." Commissioner Fuller indicated that he believed the current definition to be too liberal, and that he would like it better defined; he requested that the Board agree to allow Staff to develop such an amendment and bring it to the Board as quickly as possible. There were no objections to this request, and the Mayor indicated that Staff was "so directed."

In addition to the definition of Furniture Store, there is also a definition for Furniture Showroom, as follows, which may be relevant for the Planning Board to consider:

Furniture showroom means a retail establishment that utilizes large, open floor areas to display furniture or mattresses.

While Furniture Store is listed as a permitted use (only within the C-2 zoning district), Furniture Showroom is not specifically listed or otherwise referenced as being prohibited. From a parking standpoint, these uses or areas of a use are treated differently, with Furniture Stores being included along with all other General Retail uses (requiring one parking space for each 250 square feet of gross floor area, plus 1 parking space for each employee, but no less than 2 employee parking spaces for each retail unit or establishment), and Furniture Showrooms having a specific parking requirement of 1 (one) parking space for each 500 square feet of gross floor area.

A distinction between a Furniture Store and Furniture Showroom was discussed during the development of the UDO. It is understood that there was a consideration to establishing a distinction between a retail store that may sell furniture, and a Furniture Store that commonly includes a Furniture Showroom. Staff is of the opinion that this distinction, or lack thereof, may be important to clarify at this time.

The Town's Comprehensive Plan contains no specific policies pertaining to Furniture Stores.

Should the Board wish to consider a text amendment specifically responding to the direction of the Board of Commissioners, Staff would recommend the following changes to the definition of Furniture Store:

Furniture store means a retail establishment that primarily sells, to the general public, furniture intended to support various human activities such as sitting, eating, and sleeping; the establishment may also sell home furnishings or related goods incidental to the sale of furniture. Storage area and the storage of furniture "on-hand" or "in-stock" for same-day transactions is commonly limited.

As noted under Overview and Background, should the Board wish to consider addressing the separate terms and definitions for Furniture Store and Furniture Showroom, Staff would recommend deleting both terms and definitions, and adopting a new term and definition, as follows:

Furniture store/showroom means a retail establishment that primarily sells, to the general public, furniture intended to support various human activities such as sitting, eating, and sleeping; the establishment may also sell home furnishings or related goods incidental to the sale of furniture. Furniture available for purchase is commonly displayed in large, open areas, and is not available "on-hand" or "in-stock" for same-day transactions, with limited storage of inventory.

In addition, under this alternative approach, Staff would recommend that:

- the Furniture Store use as included in Sections 6.6 (Table of Uses), 7.32.2., and 10.37.1.3. be changed to Furniture Store/Showroom; and
- that Table 10-2, Required Parking by Use, be amended by deleting Furniture Showroom as a separate use and Furniture Store from the list of General Retail uses, and that Furniture Store/Showroom be added as a use with the following required parking:
 - o One (1) parking space for each 500 square feet of gross floor dedicated to open display area of furniture, and one (1) parking space for each 250 square feet of gross floor for all other areas of the establishment; additionally, one (1) parking space shall be provided for each employee, with no less than two (2) employee parking spaces for each establishment.

Mr. Zehner confirmed for Ms. Harrison that storage of furniture would be limited stating that commonly they wouldn't have significant items in storage, the items would be for display only and they would be purchased and delivered at a later date.

Mr. Ferguson expressed confusion and questioned what they were trying to do; what is the concern? Is the concern about storage? What are "we trying to protect ourselves" from?

Mr. Zehner stated he would have to defer to the direction from the Board of Commissioners, addressing Mr. Fuller's concern that the current definition was too liberal.

Mr. Elder questioned if the concern was related to the previous item regarding the Dream Center. Mr. Zehner confirmed that this would not affect the Dream Center unless they chose it to, because the text amendment was initiated after their filing of their application.

Mr. Ferguson stated that they need to know more regarding the concern and sensed that it has to do with storage; whether a building is being used more for the sales or storage. Mr. Ferguson noted that when a parking standard is calculated whether for retail or some other use, storage is counted as part of the retail operation. Mr. Ferguson questioned if too much storage is the problem.

Mr. Zehner noted that if the Board would like more information regarding the intent they would need to go back to the Commissioners and ask.

Mr. Zehner confirmed for Mr. Gwinn that the Board of Commissioner had adopted the Furniture Store use as part of mixed-use development and that Furniture Showroom is not a specifically permitted use in any district, but is also not entirely different than a furniture store. Mr. Gwinn questioned what it was that they are trying to allow.

Chair Vaughan noted that this was why they were talking about combining the two terms under one definition.

Mr. Zehner confirmed for Chair Vaughan that the UDO does not make a distinction between how much storage retail is generally allowed, however, he noted that warehousing/storage is considered a specific use. In any given use, if there is so much storage associated with the use then storage would become the principal use.

Mr. Ferguson suggested maybe coming up with a standard for Furniture Store with a certain maximum percentage allowed for storage.

Mr. Zehner suggested that the Board can recommend an action and it would go to the Commissioners in November on the consent agenda. The Commissioners can hear the Board's concerns and have an opportunity to get clarification from them and maybe come up with a different or better recommendation in the November meeting for public hearing in December. Alternatively, the Planning Board can defer action until they get further clarification.

Chair Vaughan questioned if this was retail in general or specific to Furniture Stores because of the bulk and volume of what they are selling; they inherently take up more space than a toy store for instance. Chair Vaughan noted that they could have a standard limiting storage for all retail uses, something broader that wouldn't feel so targeted.

Ms. Wright questioned what they are trying to accomplish.

Chair Vaughan noted that they need more information before taking action, find out what are the Commissioners' concerns. Depending on the intent maybe it needs to be clarified for all retail uses.

Mr. Ferguson noted that the proposed definitions do not necessarily limit storage if that is the intent.

Mr. Elder questioned how many properties would fit this use and what would it mean for them if the definitions are changed.

Mr. Zehner noted that it could possibly make certain businesses legally non-conforming, but he did not anticipate this to be the case noting that there are only a handful of these types of businesses in Town.

The Board agreed to defer taking action until they can get further clarification from the Board of Commissioners.

Discussion of Event Home Registration

Deputy Planning Director Kelly Wyatt explained that after discussion at the Planning Board's February 2020 meeting, the Board requested that Staff bring back a draft amendment at a future meeting. This item was later continued due to Covid-19.

Since that time Planning Staff has drafted an Event Registration Application for the Board's consideration and feedback and to determine whether this should first be applied as a Policy or enforced by Ordinance. A copy of the memorandum from the February meeting as well as a copy of the Town of Duck's policy and application was included in Staff's memorandum to the Board.

Ms. Wyatt reviewed the proposed application for the Board noting that it includes date, time, location of event and point of contact information. The application also gives/requests information related to parking, sound/noise, trash collection and signage.

Ms. Wyatt confirmed for Mr. Gwinn that the application was very similar to the one used by the Town of Duck.

Mr. Gwinn recommended that they may want to have an event start and end time.

Ms. Wyatt confirmed for Ms. Wright that parking and other issues have been limited this year due to Covid-19's effect on gatherings.

Mr. Elder noted that he had seen an increase in Beach Weddings in the past couple of weeks. Ms. Wright confirmed that October is one of the busiest months for weddings.

Ms. Wyatt confirmed for Chair Vaughan that based on their recommendation, Staff would need to draft an ordinance and bring it back for the Board to take action. But if they prefer to have it as policy then they could take action today.

Ms. Wyatt confirmed that several initiatives have started out as policies with Staff trying to do some education with realtors and event planners and go from there, see what issues may arise.

Ms. Wright asked how would people know to do this (register their events)? Ms. Wyatt noted that they would try to get the information out as much as possible and then of course if they come across an event that is occurring, they would approach and make them aware that this is out there.

Chair Vaughan noted that even if it was ordinance, they could still say they didn't know. Chair Vaughan also noted that there are certain properties that are marketed as wedding/event sites so that would be a good starting point.

Mr. Zehner confirmed for Ms. Harrison that short-term rental registration is an ordinance, not a policy, and Staff has gotten the word out through the website, social media and mailing postcards to property owners; Mr. Zehner estimated that about 30% of short-term rentals have registered so far.

The thought might be to approach it similarly, but as policy it would not be enforceable. They can see how it goes and if that doesn't solve the issue then move to an ordinance.

Mr. Gwinn noted that if they were to draft it as an ordinance rather than a policy the Town would not necessarily need to fine them for a first offense, they could still have an opportunity to educate.

Ms. Wyatt confirmed for the Board that it is the owner of the property that generally receives the Notice of Violation.

Mr. Elder noted that a lot of the issues that could be possible violations are already addressed in the Town's codes. The registration process allows the event organizer to be educated on the Town's policies and regulations, and gives a point of contact in case of issues.

Ms. Wyatt noted that the event information would be distributed to the Town Manager, Chief of Police, Fire Chief, Property Owner, HOA, etc., so if there were any red flags they would be quickly addressed.

After some further discussion, the Board re-affirmed and agreed that they would rather have it as an ordinance rather than a policy.

Report on Board of Commissioners Actions – October 7, 2020

Mr. Zehner gave a report on the Actions from the Board of Commissioner's October 7th, 2020 Meeting. Of note, the Board unanimously adopted the Proclamation declaring October 2020 as Community Planning Month as presented. The Board unanimously approved the Islington Beach Access Site Plan as presented. The Commissioners had a discussion and reached consensus on further camping provisions. Deputy Town Manager Andy Garman discussed and provided some clarification on the Dowdy Park Event Coordinator part-time position. It was Board consensus to direct Staff to prepare a new lighting study for the Town to include a review of signage.

Mr. Gwinn asked what the impetus was for the lighting study. Mr. Zehner confirmed that recently Sugar Kingdom opened in Town and it has raised a lot of concerns about lighting and whether the ordinance regulates lighting appropriately based on new technology such as LED lights.

Mr. Ferguson inquired if the Town had any standards or regulations on residential lighting. Mr. Zehner noted that the outdoor lighting ordinance states that it's not intended to regulate residential lighting except in those cases where security lighting becomes a nuisance.

Mr. Ferguson would like to encourage Staff to take a look at that given the size of some the houses and how much light they are putting out.

Mr. Elder and Ms. Harrison agreed, noting that it was worth talking about.

With regards to signage, Mr. Gwinn inquired if the Town had any ordinances or policies related to flags. Mr. Zehner noted that there are regulations related to flags however the Town does not regulate content. Mr. Gwinn spoke about a recent large political flag with vulgar and offensive language.

Mr. Elder noted that he had seen people stop their cars in the middle of the road to take photos of certain signs.

Mr. Zehner explained that it is a complicated issue because they are under First Amendment speech protections. Local government regulation is limited to when, where and how large a sign can be. Mr. Zehner noted that they generally cannot regulate sign content unless, as Mr. Elder stated, it could be a public safety issue. Mr. Zehner also noted that State statute allows almost an unlimited number of signs on State right-of-ways, 30 days prior to an election.

Town Updates

None

Discussion Items

September 29, 2020 Director's Report

Mr. Zehner presented his Director's Report to the Board. This report was shared with the Commissioners at their October 7th Meeting. The report included the August 2020 Planning & Development Monthly Report which gives an overview of permitting, inspections and septic health activities. The report also covers meeting and activities that Staff was involved in during the month.

The report gave an update on Short-Term Rental Registrations, Non-conforming Hotels and Fishing Piers/Legacy Establishments, CAMA Land Use Plan, the 2020 Census, Town Workforce Housing Study & Plan, Skate Park Renovations, Decentralized Wastewater Master Plan and the Dowdy Park Farmer's Market.

Presentation and discussion of the 2017 Comprehensive Plan

Principal Planner Holly White presented an overview and an accompanying slideshow presentation to the Board about the 2017 Comprehensive Plan.

The Nags Head Comprehensive Plan is the official policy document adopted by the Board of Commissioners to strategically plan for and enhance the quality of life and physical character of the community. The plan, while not regulatory in nature, builds upon other adopted plans and policies to provide a foundation for decision making, future regulations, and project development. The vision, goals, policies, and actions of the Comprehensive Plan form the policy basis of the Town's recently adopted Unified Development Ordinance (UDO).

Ms. White noted that as there were some new members, it was important for the Planning Board to understand how the Comprehensive Plan came together.

Ms. White explained that FOCUS Nags Head was a two-part project that was initiated in 2015. The first portion of the project, the Comprehensive Plan, was focused on an update of the Land Use Plan and incorporation of other long-range planning documents into a single comprehensive document. The second portion of the FOCUS Nags Head project was an update to Town land development codes that began in 2017.

There were two citizen committees appointed to guide these processes: the Advisory Committee and the Technical Committee.

The Advisory Committee was appointed to provide guidance to staff on policy issues related to the vision and strategic direction of the plan. This committee was instrumental in providing feedback on the vision, future desires, and direction for specific character areas of the Town. During the two-year period, there were approximately twenty (20) Advisory Committee meetings, five (5) Community Meetings, and over 75 stakeholder interviews to gather public input. Ms. White noted that current Planning Board Members Molly Harrison and David Elder were part of the Advisory Committee.

The Technical Committee was appointed to provide guidance and feedback to staff and the consultant on technical issues related to development of code language and further implementation of the Comprehensive Plan.

The Comprehensive Plan is broken down into 4 basic sections:

— Section 1: Context and Setting describes current conditions in the Town, including demographics and population, and outlines the vision.

— Section 2: Character Areas describes the eight distinct areas of Nags Head that require special planning to maintain or enhance their unique characteristics. Each character area contains a brief description of the existing conditions, develop plan outlining appropriate land uses, density, and design characteristics, and essentials actions and considerations to achieve the vision of this area.

The policies that support the vision and development plan of each character area are discussed in detail in Section 3, Elements and Policies and are broken into seven elements: Land Use, Natural

Resources and Resiliency, Economic Development and Tourism, Cultural Resources, Parks and Recreation, Transportation, and Municipal Services. The policies in this portion of the plan are broad in nature and apply generally town wide. Under each main element are sub-elements that explain the primary concerns of the community. In addition to a discussion of key issues, each element includes a table of policies and actions to guide future decision making. The seven elements are identified by a primary two letter code. Policies under each element are numbered and actions are lettered, creating a simple four-letter code that makes each policy and its actions uniquely identifiable. The actions for each policy can best be described as the steps the Town will take to achieve the policy.

— Section 4: Implementation moves the policy discussion one step further by providing a detailed policy and action matrix that outlines how each action will work to be accomplished, the potential costs, and who is responsible. The matrix is an extension of the policy and action tables from Section 3, but with greater detail including financial resources, time frame, and priority levels of each policy action. This section also relates each policy to the five goals and vision described at the beginning of the plan.

Staff uses the Comprehensive Plan to determine if development applications are consistent with the vision and policies of the plan. This, along with other relevant information, is generally the basis for Staff's recommendation to the Planning Board and Board of Commissioners for development applications.

UDO Sections 3.5.3, Action by the Planning Board and 3.5.4, Action by the Board of Commissioners describes how the Planning Board and Board of Commissioners must find consistency with the Comprehensive Plan for text and zoning map amendments. This UDO requirement is based in North Carolina General Statute 160A-383 Purposes in view. This portion of the statute requires that zoning regulations shall be made in accordance with a comprehensive plan.

Chair Vaughan noted that she had recently had a one-on-one "remedial" session with Ms. White and would encourage other Board members to do the same if they had further questions.

Planning Board Members' Agenda

Mr. Ferguson raised the issue of Affordable Housing and inquired if there had ever been a salary study done as he believes salaries are tied to housing affordability. The Board discussed this issue further with Mr. Gwinn agreeing with Mr. Ferguson that they should look at salary ratio to cost of living including housing, expenses, etc. Ms. Lambert reminded the Board that for many, salaries are seasonal and not year-round. Ms. Lambert also noted that the Visitor's Bureau should be involved in any employee housing discussions. Mr. Zehner agreed stating that the issue is multi-dimensional and needs to be addressed in a comprehensive way.

Mr. Gwinn inquired about the Multi-Use Path noting that it seems to skip sections of the Village. Mr. Gwinn inquired about the Town's process for determining the route of the path. Ms. White noted that in the Comprehensive Plan in the transportation section there is a map showing the proposed Multi-Use Path which costs about a million dollars per mile. Due to funding, the path has been constructed through a phased approach. Mr. Zehner stated that in the Village the infrastructure already existed. Chair Vaughan agreed noting that one of the main goals of the path was to connect the westside neighborhoods.

Planning Board Chairman's Agenda

Chair Vaughan brought up the issue of parking and what is currently allowed and not allowed. Chair Vaughan noted that as the Town continues to grow and with the influx of people it will become more of an issue, not just as it relates to events but in general. Mr. Elder agreed noting issues with signage and/or lack of signage, overnight parking and enforcement.

Mr. Zehner stated that Staff could bring back something to the Board that gives an overview of the Town's regulations with regards to parking.

Adjournment

A motion to adjourn was made by David Elder. The time was 11:08 AM.

Respectfully submitted,
Lily Campos Nieberding

DRAFT