

**Town of Nags Head  
Planning Board  
December 15, 2020**

The Planning Board of the Town of Nags Head met on Tuesday December 15, 2020. Due to Covid-19 restrictions, this meeting was held electronically/remotely utilizing the online ZOOM meeting platform. Members of the public were invited to attend the meeting using the ZOOM platform or app, or by calling in using a phone.

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

***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, Kristi Wright second, and the motion passed unanimously via roll call vote.

***Public Comment/Audience Response***

None

***Approval of Minutes***

Chair Vaughan asked for a motion to approve the minutes of the November 17, 2020 meeting. David Elder moved to approve the minutes as presented, Meade Gwinn seconded, and the motion passed unanimously via roll call vote.

***Action Items***

*Consideration of a Text Amendment to the Unified Development Ordinance pertaining to the reduction of the side yard setbacks for corner lots abutting unimproved rights-of-way. **Continued from November 17, 2020 Meeting***

Deputy Planning Director Kelly Wyatt explained that at their November 4, 2020 meeting, the Board of Commissioners heard a request from Derek and Kristi Stallings to consider the abandonment of an existing paper street, Warren Street, or a portion thereof. The Stallings own the lot located at 6316 S. Virginia Dare Trail, abutting the south side of the unimproved 20 ft. right-of-way, and plan to construct a dwelling on this lot.

Regardless of whether the street is improved or not, as a corner lot, the minimum corner lot setback of 15 feet from the property line/right-of-way would be applied to any construction of a principal structure on this lot. By abandoning the unimproved right-of-way, their property would have been extended to the center line of the former right-of-way, thereby increasing the lot area of the property (as well as the adjoining lot to the north) and resulting in the lot no longer be considered a corner lot, and therefore not being subject to a greater side yard setback.

It was the consensus of the Board of Commissioners that they were not inclined to abandon the right-of-way as requested, and further that they were generally not in favor of abandoning any unimproved rights-of-way within the Town as there were numerous potential public uses, however they did direct Staff to look into potential options for reducing the minimum 15-foot corner lot setback back requirement for cases such as that of the Stallings and similar.

At their November meeting, Staff presented the Planning Board with two possible options. Planning Staff also noted that the Board may wish to consider, in either Option, that the reduction apply only to rights-of-way of a specified width. During the discussion Staff noted that pursuant to Town Code Section 36-4, Streets, Sidewalks and other Public Places, Design Standards, notes that the least amount of pavement width allowed to meet Town standards is 40 feet wide for an Environmental Street.

The Planning Board expressed concern that if the necessary waivers were granted, a right-of-way width less than 40 ft. could be developed for one-way traffic flow and/or parking.

Staff discussed this possibility with the Town Engineer, David Ryan and he noted that the narrowest paved width possible would be 16 feet; Mr. Ryan indicated that this is the minimum width eligible for state street aid for a public road. This minimum standard was utilized for the 2013 Carolinian Circle street improvement project as part of an alternate environmental street standard to minimize tree removal in the right-of-way. Based on this, Staff would not recommend that any reduction in corner lot side yard setback be tied to the width of the right-of-way. As noted in Ms. Wyatt's staff memorandum, there are no unimproved rights-of-way within the Town less than 16 feet in width.

In researching old minutes, Staff learned of a text amendment adopted in 1982 related to the regulation of side yard setbacks for corner lots. This language allowed side yard setbacks for corner lots to be the same as for the district, with exception of that space that lies forty (40) feet from the point of intersection of the intersecting right-of-way, which would meet the intent of providing adequate sight clearance. Specifically, the language read, "For corner lots, to ensure adequate sight clearance, for a distance of not less than 40 feet from the point of intersection of the intersecting right-of-way the side yard shall be no less than fifteen (15) feet".

Ms. Wyatt noted that language has since changed but Staff has unsuccessfully tried to locate the subsequent amendment which revised this language to that of the current language. Generally, staff finds this to be an acceptable means to ensure adequate sight clearance for corner lot developments.

Ms. Wyatt confirmed for Ms. Wright that this would be for corner lots only. Ms. Wyatt explained that currently the side yard setback varies depending on the zoning district, but it is 15' for corner lots regardless of district.

Ms. Wyatt confirmed for Chair Vaughan that this option could help the Stallings.

Ms. Wyatt confirmed for Mr. Gwinn that the Stallings' lot fronts South Virginia Dare Trail.

Chair Vaughan noted that the 1982 amendment made a lot of sense and wondered if it “just fell off the radar” rather than being officially changed. If they are just looking to preserve the sight triangle, she could not think of any reason why it would not make sense.

Planning Director Michael Zehner noted that the Town has a provision that is not just applicable to corner lots, that allows for a reduction of front yards but no less than 15 feet. That 15 feet appears to be seen as a necessary minimum with respect to sight lines.

Mr. Zehner confirmed for Ms. Wright that the 15 ft sight line would apply both to improved and unimproved rights-of-way.

Ms. Wyatt reviewed for Mr. Elder and the Board the Staff recommended options along with some criteria that would need to be met.

The Board discussed the pros and cons of the options.

Mr. Ferguson noted that while the change might help the Stallings a little bit, by changing the setbacks it is adding to the intensity of development of corner lots; allowing for a larger house to be built. Mr. Ferguson is concerned that they (the Town) are giving up something that they don't need to give up.

Ms. Wyatt confirmed for Ms. Harrison that Staff has had pushback previously against corner lot setbacks, especially those that are adjacent to unimproved rights-of-way; and there have even been variances with applicants requesting a reduction of a setback due to a perceived hardship; it has always been an issue.

Mr. Gwinn stated that he was in agreement with Mr. Ferguson and questioned if the Stallings knew about the setback when they purchased the lot.

Mr. Ferguson reminded the Board that previously there was a store and gas station on that lot; there was full commercial use of that lot so to have someone come in and ask for a reduction in the setback for a residential use does not seem right. When the property was purchased, they (new owners) should have seen the setbacks which are normally shown on the survey.

Ms. Lambert agreed with Mr. Ferguson noting that she had recently bought a property and was fully aware of what they purchased and what the setbacks are.

After some further discussion, Molly Harrison moved to recommend denial of the proposed text amendment. Mr. Ferguson seconded, and the motion passed unanimously via roll call vote.

### ***Report on Board of Commissioners Actions – December 2nd, 2020***

Mr. Zehner gave a report on the Actions from the Board of Commissioner's December 2, 2020 Meeting. Of note, there was a Consent Agenda to schedule a public hearing for amendments pertaining to Furniture Store, storage uses and building contractor offices; the Board adopted the resolution opposing the installation of additional power poles on US 158 by Dominion Energy as presented and Staff is to follow up on power poles that are in CAMA-designated areas. The Board appointed several members of the public, including Chair Vaughan to the Jockey's Ridge State Park Soundside Access ad-hoc Committee. Finally, Mayor Pro Tem Siers noted that the area's demographics are changing, and he would like to see the Town be proactive; as the community

becomes more of a year-round rather than weekly rental community, he feels the Town will see less occupancy tax along other impacts such as increased traffic, water usage, etc.

### ***Town Updates***

None

### ***Discussion Items***

#### ***November 25, 2020 Director's Report***

Mr. Zehner presented his Director's Report to the Board. This report was shared with the Commissioners at their December 2nd Meeting. The report included an updated permitting report which included the 1st Quarter of FY20-21 (July 2020 - September 2020); update of Stormwater Ordinance Resource Materials and Standards - the BOC may still be considering whether to further discuss changes to the Town's residential stormwater regulations, to which Staff and the Planning Board have provided feedback and recommendations; update on Provisions for the Registration of Events Held at Residential Properties; update on recent grant awards including one from the National Fish and Wildlife Foundation's National Coastal Resilience Fund to Develop an Estuarine Shoreline Management Plan for the Town. The report also included updates on CAMA Land Use Plan, Town Workforce Housing Study & Plan, Nonconforming Hotels and Fishing Piers - Legacy Establishments/ Structures which will come back to the Board in January for further discussion, Skate Park Renovation Project, Art Masts Project, Decentralized Wastewater Management Plan and the Dowdy Park Farmer's Market which this year has included three well attended holiday markets.

#### ***Review and Discussion of Town Outdoor Lighting Regulations. Continued from November 17, 2020 Meeting***

Principal Planner Holly White explained that at their October 7, 2020 meeting, the Board of Commissioners requested that Staff conduct a study of the Town's outdoor lighting regulations, including as they pertain to signage, with consideration of best practices related to both technical aspects and aesthetics. Specifically, the Board of Commissioners are concerned that evolving and new lighting technologies have rendered our current regulations (now over 30 years old) obsolete, and result in increased potential for glare, light trespass onto adjacent properties, and more intense lighting visible at greater distances. The Board reiterated the Town's long-standing values for a dark night sky. Staff confirmed that the Board wished Staff to conduct this review with the input of the Planning Board and return conclusions and recommendations to the Board at a future meeting.

The Planning Board discussed this item at their meeting on November 17th, 2020 meeting; the Board requested that Staff further review the current ordinance and highlight areas that need updating. The Board requested that Staff provide this information at the December Planning Board meeting.

In order to provide this information, Ms. White presented a Power Point presentation:

Ms. White gave an overview of the existing Ordinance which she noted is not specific enough and generally regulates commercial properties only, not residential.

Mr. Zehner explained to the Board that Staff had recently learned that multi-family dwellings and cottage courts rely on Dominion Power as a vendor for their outdoor lighting needs. Dominion Power may not be aware of the Town's lighting regulations and permitting procedures. Mr. Zehner stated

that there is a need for an educational component and Staff have reached out to Dominion Power to discuss this issue further.

Ms. White noted that as part of this review Staff will be looking at signage as well as lighting, and more specifically the lighting of signs.

Ms. Wright pointed out the new retail store Sugar Kingdom as a good example of what we (the Town) don't want as far as lighting.

Mr. Zehner explained for Ms. Harrison and the Board that in the case of Sugar Kingdom they have multiple, internally illuminated signs. In this example it's not as much the type of light as the number of lights and signs that are being used.

Mr. Zehner reminded the Board that any changes that they make to the regulations would not affect existing properties.

Mr. Zehner asked the Board that now that it gets dark earlier it is a good opportunity to drive around and take a look at how different properties are lit up and to note what the Town may or may not want as far as lighting. Some things to consider would be the use of timers and timing in general. Some municipalities require less lights or don't allow lights after a certain time period.

Ms. White continued with her presentation noting that recently a lighting expert had done a courtesy review of the Town's current ordinance. Among his recommendations was to utilize IES standards and BUG ratings.

Mr. Zehner discussed IES standards and BUG rating in further detail, noting that instead of adopting those standards, the Town could develop their own standards incorporating IES standards into the ordinance.

Mr. Zehner suggested no longer regulating foot-candles as this is outdated and no longer an effective way of regulating light intensity. Mr. Zehner also noted that the current ordinance does not reference lumens which is what LED lights put out instead of wattage.

Ms. White reviewed some general best practices showing samples from other municipalities; these included: Reducing wattage (lumens), requiring lower mounted luminaries, using full-cutoff fixtures, minimizing blue light emissions and looking at color/color temperature.

Ms. White then reviewed some recommendations, including: Performing a lighting assessment; Learning where are glare and light trespass are a problem in town and correcting violations; using this information to inform regulations; Considering the possible creation of lighting zones; Creating minimum regulations for residential properties such as the use of motion sensors, full cut off fixtures, mounting heights, color temps, lumen levels, etc.; Creating separate standards for existing vs. new development; Considering the lighting expert's comments; Reviewing and assessing the number and size of allowed signage and how it's lit and finally, Educating the public about the Town's lighting requirements.

Mr. Elder stated he liked Mr. Zehner's idea of commercial businesses turning off or reducing lights during off hours. Mr. Elder also suggested looking at recommendations for security lighting noting that too much or the wrong type of lighting can defeat the purpose. Mr. Elder stated that maybe Businesses could look into having two types of lighting; one during normal hours of operation and one for after hours.

Ms. Harrison noted that she was glad that the Town was looking at the lighting ordinance and agreed that the education component was an important and necessary piece.

Chair Vaughan suggested looking into the possibility of incentivizing existing development to do things differently. Ms. White agreed noting that there might be some possibilities through the State. Mr. Zehner also suggested looking into Dominion Power as they might also offer some incentives.

Ms. White confirmed for Mr. Elder that currently there are not lighting standards in AEC that apply to residential properties.

Chair Vaughan stated that she was in favor of creating some minor regulations/recommendations for residential properties and noted that educating residential property owners and creating awareness were key.

Chair Vaughan and Mr. Ferguson were both in favor of creating "Light Zones".

Ms. White confirmed for Mr. Ferguson that all the definitions are in Appendix A of the UDO. Mr. Zehner noted there is no current definition for nuisance lighting.

Ms. Wyatt confirmed for Mr. Ferguson that under prohibitive lighting, façade lighting and up lighting are not technically allowed but there are some businesses that have it, may have been allowed prior to current regulations.

Mr. Zehner confirmed for Mr. Ferguson that Sugar Kingdom had been in violation, but it has since been resolved and they are now compliant with current regulations.

Mr. Zehner confirmed for Mr. Gwinn that the Town gets several complaints a year related to lighting.

Mr. Elder agreed that the current language is vague and there is not a lot of definition related to security lighting.

Mr. Ferguson inquired about public streetlights, especially those for new subdivisions and asked whether the Town should think about regulating the style of lights. Mr. Zehner noted that they could certainly look into this further.

Mr. Elder suggested that at some point they may want to consider getting public input and Mr. Zehner agreed noting that this could be done via a quick public survey. Mr. Elder stated that public input would help bring momentum and acceptance of upcoming changes.

#### Discuss N.C.G.S. 160D And Update Of UDO

Ms. Wyatt stated that this change in legislature represents a rather significant update which will mean making some changes to the new UDO.

Ms. Wyatt explained that the new Chapter 160D of the North Carolina General Statutes consolidates current city- and county- enabling statues (now found in Chapters 153A and 160A, respectively) into a single, unified chapter, and pulls in related statutes previously scattered throughout the General Statutes. Chapter 160D also places these statutes into a more logical, coherent organization. Without

making major policy changes or shifts in the scope of authority granted to local governments, the legislation also includes many clarifying amendments and consensus reforms.

Chapter 160D was originally effective as of January 1, 2021; however, due to the Coronavirus pandemic, an extension was been granted to July 1, 2021. All city and county zoning, subdivision, and other development regulations, including unified development ordinances, will need to be updated by July 1, 2021 to conform to the new law. The North Carolina School of Government has issued numerous publications as well as webinars to help municipalities understand the various updates and revisions now required.

Planning Staff has begun preparing draft revisions to the Unified Development Ordinance to address the updates necessary as part of the NCGS Chapter 160D Legislation. With the need to adopt the revised UDO to reflect Chapter 160D revisions no later than the Board of Commissioners meeting in June 2021, Staff intends to have the first draft of the revised UDO to the Planning Board at their February 2021 meeting with an opportunity to provide a recommendation to the Board of Commissioners no later than April 2021, with an expectation the Board of Commissioners would have meetings in May and June to consider final adoption.

Ms. Wyatt gave as an example of the change that the term Conditional Use Permit is no longer allowed and will be replaced with Special Use Permit instead so that everyone is using the same language. The Board then briefly discussed this change.

#### ***Planning Board Members' Agenda***

None

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

Chair Vaughan reminded the Board that January's meeting will begin with Staff officiating and election of the Chair and Vice Chair.

#### ***Adjournment***

A motion to adjourn was made by David Elder. The time was 11:25 PM.

Respectfully submitted,  
Lily Campos Nieberding