



# STAFF REPORT

## Town of Nags Head

### Planning & Development Department

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To: Board of Commissioners

From: Kelly Wyatt, Deputy Planning Director  
Michael Zehner, Director of Planning and Development

Date: March 29, 2021

Subject: Preliminary Plat for a Major Subdivision, titled Louisa Farr, Lot 4, Ralph Buxton Division, for an approximately 4.06-acre property, zoned SED-80 and SPD-20, located at 468 W. Villa Dunes Drive (Parcel# 008536000; PIN# 989214321617); the Preliminary Plat proposed to divide the existing lot into two lots, requiring the modification of a condition imposed upon the original Preliminary and Final Plat titled Division for Ralph Buxton, et.al.

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### OVERVIEW

The subject application is a Preliminary Plat for Major Subdivision of an approximately 4.06-acre property located on the west side of Villa Dunes Drive just north of the Villas. The Proposed Subdivision would create two (2) lots. Proposed lot 4A is approximately 2.84 acres in area and is split-zoned between the SED-80, Special Environmental District, and the SPD-20, Special Planned Development District. Proposed Lot 4B is approximately 1.22 acres and is located entirely within the SPD-20, Special Planned Development District. The image below is to identify the property and does not reflect the proposed subdivision; the intervening line through the property is the right-of-way of S. Old Nags Head Woods Road.



While proposed Lot 4A is split-zoned between the SED-80 and SPD-20 District, as proposed it does meet the dimensional requirements, including lot area and frontage for the SED-80 District. Proposed Lot 4B, located entirely within the SPD-20 District, as proposed does meet the dimensional requirements, including lot area and frontage for the SPD-20 District. The right-of-way for Old Nags Head Wood Road bisects the parcel, however, the applicant is proposing a shared access to proposed Parcels 4A and 4B via a shared driveway from W. Villa Dunes Drive.

A request of this nature would typically be considered a Minor Subdivision, however, the Board of Commissioners approval of the original plat for this property, titled Division for Ralph Buxton et. al., included a condition, also memorialized on the recorded final plat, precluding the further subdivision of lots within the 4-lot subdivision (see attached minutes of the September 8, 1986 Board of Commissioners meeting). In consultation with the Town's attorney, this plat is to be reviewed as a Major Subdivision to request removal or modification of the condition by the Board of Commissioners. Based upon the record, Staff understands the condition prohibiting further division of the lots was based upon a waiver requested, and granted, because the properties lacked frontage along a public street, W. Villa Dunes Drive being a private street at the time; W. Villa Dunes Drive is now a public street, no longer necessitating a similar waiver for this proposed subdivision.

## **PROCEDURAL REQUIREMENTS/CONSIDERATIONS**

The procedural requirements applicable to subdivisions are provided in Article 4, *Development Review Process, Part IV, Subdivision Procedures*, of the UDO; requirements or considerations of note are as follows:

- Pursuant to Section 4.22, *Initial Conference; Preliminary Sketch*, the applicant was first required to submit a preliminary sketch of the proposed subdivision and confer with the UDO Administrator. These requirements were completed, with authorization on March 2, 2021 to prepare a preliminary plat to be submitted to the Planning Board.
- The following subsections, or parts thereof, to Section 4.24, *Review Procedure for Major Subdivisions*, 4.24.1, *Preliminary Plat*, are applicable to the proposed subdivision:
  - 4.24.1.2., in part, "...the UDO Administrator who shall evaluate the plan to determine whether or not it meets the requirements of this Ordinance. The UDO Administrator will solicit and receive comments from other persons or agencies before making final recommendations. If the application is complete, the UDO Administrator will submit it to the Planning Board..."

It has been determined by the UDO Administrator that the plan for the Proposed Development meets the requirements of the UDO, to be discussed further below under **REGULATORY & DESIGN REQUIREMENTS/CONSIDERATIONS**. Additionally, comments were

solicited and received from Town Staff during the March 2<sup>nd</sup> Technical Review meeting; two comments of note suggested that an easement be shown for the anticipated shared driveway, and that the applicant demonstrate that the requirements of Section 11.6.2. pertaining to stormwater runoff for residential subdivisions are met. In both cases, Staff would suggest that conditions of approval are appropriate, as noted under **Staff Recommendation.**

- 4.24.1.3., in part, “The Planning Board shall forward its recommendation to the Board of Commissioners within thirty (30) days after first consideration by the Planning Board. If the Planning Board fails to act within the 30-day period, the subdivision will be placed on the next available Board of Commissioners agenda. The Board of Commissioners shall consider the preliminary plat and approve, approve with conditions acceptable to the applicant, or disapprove the plan.”
  
- 4.24.1.4., in part, “the Planning Board shall determine whether the preliminary plat meets the policy, purposes, and standards established by this Part and shall study its practicability, taking into consideration the requirements of the community and the best of use of the land being subdivided. Particular attention shall be given to the arrangement, location and width of streets, their relation to the topography of the land, water supply, sewage disposal, drainage, lot sizes and arrangement, the future development of adjoining lands, construction plans, erosion control plans and the requirements of the masterplan and the official map, if such exists, the zoning requirements and this UDO. The Planning Board shall submit its findings and recommendations to the Board of Commissioners at their next regularly scheduled meeting. The Board of Commissioners may approve, reject or grant conditional approval of the preliminary plat. The Planning Board or the Board of Commissioners, in its discretion, if it deems that health and sanitary conditions in the area, the subdivision plans and planned population density warrant, may require percolation tests of the soil by the subdivider and the installation of appropriate sanitary and waste disposal facilities as a condition of approval.”
  
- 4.24.1.5., Conditional Approval, “When recommending conditional approval of a preliminary plat, the Planning Board shall state in writing the conditions of such approval, if any, with respect to:
  - 4.24.1.5.1. The specific changes which it will require in the preliminary plat;
  
  - 4.24.1.5.2. The character and extent of these required changes; and
  
  - 4.24.1.5.3. The amount of all bonds which will be required as a prerequisite to the approval of the preliminary plat.

Conditional approval of a preliminary plat shall not constitute approval of the final subdivision plat, but rather it shall be deemed an expression of approval of the design submitted on the preliminary plat as a guide to the preparation of the final plat, which will be submitted for approval by the UDO Administrator, and for recording upon fulfillment of the requirements of this Part and the conditions of the conditional approval, if any. The Planning Board or the Board of Commissioners may require additional changes as a result of further study of the subdivision plans or as a result of new information obtained subsequent to the time of conditional approval. The fulfillment of these conditions and the incorporation of these conditions into the preliminary plat shall be determined by the UDO Administrator in accordance with the instructions of the Board of Commissioners. At such time, the Board of Commissioners' approval shall become final as to the preliminary plat, and the UDO Administrator shall so signify on the plat."

## **REGULATORY & DESIGN REQUIREMENTS/CONSIDERATIONS**

The regulatory and design requirements applicable to subdivisions are provided in Article 10, *Performance Standards*, Part V., *Subdivision Regulations*, Division II., *Approval and Platting Requirements*, and Division III., *Improvements*, of the UDO; requirements or considerations of note are as follows:

- Section 10.51.1.19., *Contents of Preliminary Plat*. The location of any natural or manmade features which may affect the suitability of the land for subdivisions. Such features shall include, but not be limited to, drainageways, flood hazard areas, wetlands, and drainage ditches. When applicable, the boundaries of flood hazard areas, wetlands, and other features shall be shown on the plat along with a notation indicating the date of determination and that the boundaries are subject to change.

The applicant has addressed this requirement with flood hazard areas and wetland areas designated on the Preliminary Plat with Environmental Evaluations notated in the Preliminary Plat Narrative.

- Section 10.51.2. *Compliance with State Law*, states that any AEC (area of environmental concern) shall be shown on the Preliminary Plat and Final Plat. There shall be a certification placed on the plats showing AEC's: "Some lots in this subdivision are located in areas of environmental concern at the date of approval. Individual permits may be required before any development may take place within those areas."

This is provided in Note #12 on the Preliminary Plat.

- Section 10.62, *Required Improvements Enumerated*, indicates the improvements required to be provided by the subdivider, as follows:
  - Street rights-of-way and paved streets;

- Water lines, mains, fire hydrants and services;
- Electric and telephone lines and conduit;
- Streetlights and supports and related electric wires and conduit; provided, however, that within the SED-80 district, street lighting shall neither be required nor permitted;
- Easements of right-of-way for utilities, where such are not within the street right-of-way.

These improvements have been shown where applicable, no streetlights and supports are shown in either the SPD-20 or SED-80 District.

- Section 10.63, *Dedications*, indicates the improvements and easements required to be offered to the Town of utility authorities for dedication:
  - Streets and street rights-of-ways;
  - Water lines, mains, fire hydrants and services;
  - Easements of right-of-way for construction, operation and maintenance of utilities and cable television lines;
  - Streetlights and supports and related electric wiring and conduit;
- Section 10.68 *Lots*, reiterates zoning requirements frontage and lot area.

Proposed Lots 4A and 4B are compliant with the dimensional requirements for the zoning districts in which they are located.

- Section 10.72, *Stormwater Runoff, Storm Drains, and Sewer Lines and Mains*, indicates that “stormwater runoff from lots shall be managed in accordance with Article 11 of this UDO pertaining to Stormwater Management (Part I) and Soil Erosion and Sedimentation Control (Part II).”

## **POLICY CONSIDERATIONS**

Policy specific to subdivisions is established in Article 10, *Performance Standards*, Part V., *Subdivision Regulations*, Division I., In General, Section 10.41, Jurisdiction; Policy, Section 10.41.2 of the UDO, as follows:

**10.41.2.** It is declared to be the policy of the Board of Commissioners and the Planning Board of the Town to consider land subdivision plats as part of a plan for the orderly, efficient and economical development of the Town. This means, among other things, that land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health, or peril from fire, flood erosion or other menace; that proper provisions shall be made for drainage, water supply, sewerage and other needed improvements; that all proposed lots shall be so laid out and of such size as to be in harmony with the development pattern of the neighboring properties; that the proposed streets shall compose a convenient system conforming to the official map, if such exists and shall be properly related to the proposals shown on the master plan, if such exists and shall be of such width, grade and location as to accommodate the prospective

traffic, to facilitate fire protection and to provide access of firefighting equipment to buildings, and to conform with existing or planned streets and with other public facilities; that a dedication of streets and rights-of-way or easements for pedestrian and utility purposes shall be made; that proper provisions shall be made for the distribution of population and traffic which shall avoid congestion and overcrowding and which shall create conditions essential to public health, safety and general welfare; and that proper provisions shall be made for open spaces for parks, playgrounds and public beaches.

With regard to the area of the Proposed Subdivision and applicable policies of the *Comprehensive Plan*, this is considered to be within the *Conservation Area* and *Significant Natural Areas Character Area*. Pages 2-56 and 2-57 note that the intent of the SPD-20 district is to promote low-density residential development and residential uses in a manner that protects and preserves natural topography and vegetation. The purpose of the of the SED-80 District is to permit low-density residential development of those portions of the SED-80 district suitable for residential use and to encourage open space and limited passive recreational use of portions not suitable for residential use. The regulations in place in this area are intended to be an implantation of these policies, and the proposed division complies with all applicable regulations; development of the lots will be subject to additional regulations.

### **STAFF RECOMMENDATION**

Staff is of the opinion that the submitted Preliminary Plat, with the attachment of the following conditions, complies with all applicable requirements, and therefore, based upon the above, Staff recommends approval of the Preliminary Plat as presented, modifying the condition previously imposed precluding further division of lots depicted as part of the Division for Ralph Buxton et. al. plat, to allow this division and only this division without further future action.

1. As part of the final plat for the Louisa Farr, Lot 4, Ralph Buxton Division, an easement for driveway access to lot 4A, across lot 4B, shall be provided, with a separate instrument recorded at the Dare County Register of Deeds.
2. In addition to the requirements of Section 11.5, *General Standards for Residential or Duplex Development on Individual Lots*, of the UDO, the development of lots 4A and 4B individually shall demonstrate compliance with Section 11.6.2. of the UDO, with the higher standards controlling; such compliance shall be documented in a stormwater plan to be approved by the Town prior to the issuance of any land disturbance and/or building permits.

### **PLANNING BOARD RECOMMENDATION**

At their meeting on March 16, 2021, the Planning Board voted 6-0 (1 recusal) to recommend approval of the Preliminary Plat for this two-lot subdivision to the Board of Commissioners with the two conditions noted in the Staff Recommendation pertaining to the recordation of a driveway access easement and compliance with the provisions of

Section 11.5 of the Unified Development Ordinance, Stormwater management standards for residential or duplex development on individual lots.

Attachments:

1. Minutes of the September 8, 1986 Board of Commissioners Meeting, highlighted for emphasis; and
2. Subdivision Plat Application including:
  - a. Project Narrative
  - b. Proposed Preliminary Plat
  - c. 1986 Ralph Buxton, et. al. Subdivision Plat (PC C SL 13C)
  - d. USACE Wetlands Jurisdictional Determination
  - e. On-site Wastewater Evaluations and Improvement Permit for Lot 4B