
**Town of Nags Head
Planning Board
March 16, 2021**

The Planning Board of the Town of Nags Head met on Tuesday March 16, 2021. 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 9:10 a.m. as a quorum was present.

Members Present

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

Members Absent

None

Others Present

Michael Zehner, Kelly Wyatt, Holly White

Approval of Agenda

Chair Vaughan asked for a motion to approve the agenda. David Elder moved to approve, Kristi Wright seconded, 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 February 16, 2021 meeting. Meade Gwinn moved to approve the minutes as presented, Megan Lambert seconded, and the motion passed unanimously.

Action Items

Consideration of a 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 proposes to divide the existing lot into 2 lots, requiring the modification of a condition imposed upon the original Preliminary and Final Plat titled Division for Ralph Buxton, et. al.

Deputy Planning Director Kelly Wyatt explained that the 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 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.

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.

Ms. Wyatt explained that 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. 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.

Ms. Wyatt shared the plat with the Board and briefly reviewed the procedural requirements/considerations for granting a subdivision; these were further detailed in her Staff Memorandum. Ms. Wyatt then discussed the regulatory and design requirements/considerations and reviewed the policy considerations.

Ms. Wyatt stated that based upon their review Staff is of the opinion that the submitted Preliminary Plat (with the attachment of two conditions) complies with all applicable requirements and would recommend 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. Ms. Wyatt then reviewed the two Staff conditions for the Board.

It was previously noted that the applicant Louisa Farr and her engineer, Brian Rubino with Quible & Associates, were present and available to answer any questions.

Ms. Wyatt confirmed for Mr. Ferguson that wetlands do count towards the overall land area of a lot.

Mr. Ferguson inquired about Old Nags Head Woods Road and Ms. Wyatt confirmed that the applicants were not asking for an abandonment of that right-of-way. Mr. Ferguson asked if the road automatically divided the parcel into two separate lots. Planning Director Zehner Michael Zehner explained that it did not, and that there was a long-standing precedent with that road and others like it; where a Town right-of-way bisects a lot, the two parts are considered one lot.

Mr. Zehner confirmed for Mr. Ferguson that based on the records, there appears to be no other reason that the Board of Commissioners placed the initial condition other than the road (Villa Dunes Drive) was unimproved.

Vice Chair Kristi Wright recused herself from the ensuing discussion and vote due to a possible conflict of interest.

Mr. Rubino stated that he had nothing to add but would be happy to answer any additional questions.

Mr. Ferguson inquired about the utility easement that was shown and asked where the driveway would be located. Mr. Rubino noted that the driveway would be further away from the wetlands and will actually go around some heritage trees in order to preserve them. Mr. Rubino discussed this with Town Staff and will be drawing it into the final plat per staff's recommended condition.

Mr. Zehner confirmed for Ms. Harrison that this was the southern end of Old Nags Head Woods Road which is generally not accessed. Mr. Zehner noted that these lots would not be accessed from that easement rather they would be accessed from Villa Dunes Drive.

Mr. Gwinn stated he did not see a problem with approving this. Ms. Harrison and Mr. Elder both agreed with Mr. Gwinn.

There being no further discussion, Meade Gwinn made a motion to recommend approval of the preliminary plat. Molly Harrison seconded and the vote passed by unanimous roll call vote with Kristi Wright abstaining.

Consideration of various text amendments to update the Unified Development Ordinance as required by N.C.G.S. 160D.

Ms. Wyatt provided a brief update on the status of the 160D revisions. Included in their agenda packet was the NC School of Government 160D Checklist as well as a set of working notes for each item within the checklist. Ms. Wyatt also stated that this time Staff had also included a PDF version of the entire document with the markup version for the Board to review.

Ms. Wyatt noted that most changes are in Sections 2 and 3 and a little bit in Section 4; everything else is wordsmithing.

Ms. Wyatt stated that the work is about 75-80% done and Staff anticipates having this item for final Planning Board review and recommendation at their April 20th meeting.

Ms. Harrison confirmed for Mr. Zehner that she liked seeing the entire document but would ask that if there was something in particular of note that Staff would like them to review or be aware of that they separate those out.

Mr. Gwinn agreed noting that if there were any changes that concerned staff, that he would want to know about that.

Ms. Wyatt noted that she had not found anything concerning or noteworthy as of yet, but would certainly share it with the Board.

Consideration of text amendments to the Unified Development Ordinance to update references in the Stormwater, Fill and Runoff Management Ordinance for regulatory reference manuals.

Engineering Technician, Kate Jones presented for the Board's review the Town of Nags Head Low Impact Development Manual and Stormwater Reference Manual. Ms. Jones noted that staff has been working on updating the Town's Low Impact Development Manual for some time now. The First Edition was published in January 2014 and prepared in connection with the NC Coastal Federation.

Ms. Jones noted that Staff had once again worked with the Coastal Federation for this updated version. David Ryan, Town Engineer also did a lot of work on the commercial components and Ms. Jones worked on the residential piece.

As stated in the Town of Nags Head's Comprehensive Plan, the Manual shall serve "as a reference document for local citizens and developers as part of town efforts to improve stormwater management and as a technical resource for application of town stormwater regulations. The manual is a guide for property owners who want to improve stormwater management on their site and for those who seek low-cost practices to achieve compliance with the Town of Nags Head Stormwater Ordinance."

This current edition incorporates the 2018 changes to the Stormwater, Fill and Runoff management Section, and provides for the inclusion of Stormwater Control Measure Fact Sheets and supplemental information related to Low Impact Development practices.

Ms. Jones noted that the updated manual was provided to the Board in the agenda packet. Changes to Article 11, Part I, Stormwater, Fill and Runoff Management, of the UDO (to address the updated Manual) and updated State resources, were also provided for the Board's consideration.

Mr. Gwinn inquired how the information gets filtered down to residents and contractors. Ms. Jones explained that from a residential perspective, someone that is planning to build a new house or addition or any other work that triggers stormwater review is given a copy of the manual with the permit. David Ryan also uses the manual to guide people on the commercial side.

Mr. Gwinn noted that there are a lot of people that could use this information but are not actively needing permits and expressed concern as to how the town gets this information to them.

Ms. Jones agreed that public outreach is an important aspect, letting people know that the manual exists, and Staff has done this through brochures to property owners, outreach videos, the Town's website and social media accounts, as well as in-person presentations. Staff is open to suggestions on other ways to reach the public.

Mr. Ferguson inquired if there any incentives given to property owners for using LID methods. Ms. Jones confirmed yes there are incentives in place including a reduction in lot coverage requirements if they used town approved permeable applications such as pavers. Ms. Jones noted that there are also incentives build into the Stormwater ordinance.

Mr. Ferguson expressed concern about the maintenance of these measures and inquired if they were being monitored. Ms. Jones stated that from a residential perspective it is the property owner's responsibility to maintain the measures. The town does have a maintenance plan in place for stormwater measures in the rights-of-way. Mr. Zehner noted that the Town does have enforcement recourses if there are changes made to a stormwater plan and most changes would trigger some type of permit.

After some further discussion, Gary Ferguson moved to recommend approval of the proposed text amendments as presented. Kristi Wright seconded, and the motion passed by unanimous roll call vote with Meade Gwinn abstaining.

Consideration of text amendments to the Unified Development Ordinance pertaining to the permitted zoning district location and supplemental regulations for hotels.

Mr. Zehner reminded the Board that at their February 17, 2021 meeting, the Board of Commissioners directed the initiation of a text amendment that would allow hotels within the CR zoning district. The Board wished to consider this amendment as an alternative to the text amendment addressing hotels as a nonconforming use within the CR zoning district.

It is Staff's understanding that the Commissioners' intent is not to necessarily encourage new hotel development but rather to remove the non-conforming use status of existing hotels by imposing restrictions on hotels allowed within the CR district that were essentially the same as those that existed prior to the adoption of the UDO.

Mr. Zehner noted that there were specific standards, including dimensional requirements, that were applicable to hotels located in the CR zoning district. Mr. Zehner included these requirements as part of his staff memorandum. Also included in the staff memo, under "Staff Recommendation", are the applicable standards for hotels in the CR district, consistent with those for hotels allowed in the C-1, C-2, and HO districts, which are shown to be inserted within the table provided under Section 7.12.1. Regulations not addressed within the former regulations are highlighted.

Mr. Zehner then proceeded to review the table and Staff's recommendations for the Board.

If the intent is to focus on pre-existing hotels and not to render the use non-conforming, Mr. Zehner suggested that the Board may want to include a date provision that the change would only apply to hotels built prior to January 1, 2021.

Mr. Zehner confirmed for Mr. Ferguson that as it is written the proposed amendment would allow for a new hotel to be built unless the Board agrees to put in the date provision.

Mr. Zehner noted that the policies in the Comprehensive Plan do not support the development of new hotels in the CR zoning district, while supporting flexibility with respect to preexisting hotels.

Mr. Zehner and the Board discussed the issue of non-conformity and how the amendments might give some relief to existing hotels in that district. The Board also discussed the Comprehensive Plan and how it guides the UDO and how it can be changed by Board (of Commissioners) action.

Chair Vaughan stated that she was in favor of the amendment and granting some relief to the existing hotels. She noted that the trend is not moving towards development of hotels but rather demoing hotels and building houses. Chair Vaughan also noted that even with the proposed amendment, it is not easy to build a hotel in the oceanfront as it is also regulated by CAMA and other factors. Mr. Zehner and Chair Vaughan agreed that any future hotel development would be driven by the market.

Ms. Harrison stated she was not in favor of allowing new hotels and expressed concern that the amendment seemed to conflict with the Comprehensive Plan. Mr. Gwinn and Ms. Lambert both agreed with Ms. Harrison with Ms. Lambert noting that these policies and vision are what set Nags Head apart from other townships.

Mr. Ferguson discussed balancing non-conforming uses with the idea of protecting legacy businesses/structures. Having a non-conformity is like "the kiss of death". Mr. Ferguson felt that it is important to minimize non-conforming uses in the Town.

After some further discussion, including some discussion related to the letter received from the Surfside hotel, Megan Vaughan moved to recommend approval of the text amendment with the date provision that the change would only apply to hotels built prior to January 1, 2021. David Elder seconded the motion. The motion carried by unanimous roll call vote.

Consideration of text amendments to the Unified Development Ordinance pertaining to the various Commercial Mixed-Use use types and the various uses allowed therewith.

Mr. Zehner reminded the Board that at their February 17, 2021 meeting, the Board of Commissioners directed the initiation of a text amendment to include religious complex as an allowed use within shopping centers.

Mr. Zehner explained that the UDO, specifies those allowable uses to be included as part of all types of Commercial Mixed-Use use designations such as shopping center. Presently, Religious Complexes, defined as "a church (a building primarily used for public divine worship) or a church and any related structures including a parsonage, fellowship halls, educational buildings, youth centers, recreational facilities (which include playgrounds), day care centers, parochial schools or similar structures or areas located on a single site," are not included as one of the allowable uses within a Commercial Mixed-Use use.

The Comprehensive Plan does not address this issue specifically. The Plan does refer to mixed-use in terms of mixing commercial and residential uses, but Staff does not believe this was intended to or contemplated the exclusion of institutional uses, such as Religious Complexes, from mixed-use development.

Mr. Zehner reviewed Staff's recommended changes for the Board:

- Add Religious Complex under section 7.32.5. Institutional
- Remove dimensional requirements for religious complexes occupying a tenant space within a building with multiple tenant spaces. Staff felt that the required dimensional requirements are more applicable to a standalone Religious Complex.

Mr. Zehner noted that religious complex is a conditional use in most districts except in the C3 District, and asked the Board to decide if a church is proposing to go into a mixed-use development should that church be permitted as a conditional use if required by that district.

Chair Vaughan questioned that just because a church is wanting to locate in a shopping center for instance, why would the Town want to remove the conditional use requirement? It seems that if that District has a conditional use requirement, it should stay a conditional use regardless of location. Chair Vaughan questioned why religious complex is a conditional use (rather than a permitted one).

Mr. Zehner explained that it may be related to their hours of operation, programming beyond a Sunday, number in attendance and other factors that may need to be reviewed more closely so that it doesn't conflict with the normal operations of the shopping center.

Mr. Elder questioned if there could be legal reasons as to why a church, especially one that offers child related services might not be able to be located too close to a store that sells alcohol or other "adult" goods for instance.

While Staff was unaware of any issues, Mr. Zehner agreed that Mr. Elder's point gave merit to keeping the use as a conditional use.

After some further discussion, David Elder moved to approve the proposed amendments keeping the use as a Conditional Use if required by that district. Molly Harrison seconded and the motion carried by unanimous roll call vote.

Consideration of text amendments to the Unified Development Ordinance pertaining to electric vehicle battery charging and battery exchange stations.

Mr. Zehner explained that given the Town's interest in the installation of an electric vehicle charging station on Town property, as well as recent private interest, Staff determined that amendments to the Town's regulations concerning these facilities was necessary.

At their March meeting, the Board of Commissioners authorized Staff to pursue amendments to the Unified Development Ordinance to address necessary changes.

The Comprehensive Plan does not address electric vehicles or charging infrastructure specifically. However, ensuring that the Town's regulations provide reasonable accommodations for the installation of charging stations recognizes the emerging market for these vehicles, which relates to the Town's economic development goals, not to mention the potential environmental benefits to making electric vehicle charging infrastructure more accessible within the Town.

Mr. Zehner noted that there are some inconsistencies within current regulations with respect to terminology, where such charging facilities may be located based upon zoning district, and the standards that such facilities are subject to.

Mr. Zehner then proceeded to review staff's recommended changes for the Board. These changes include amending the terminology/definitions by separating the uses into two separate uses: Electrical Vehicle Charging Station as a permitted accessory use in all districts and Electric Vehicle Battery Exchange Station as a permitted accessory use only within the C2 zoning district; keeping both uses as an accessory rather than a principal use; and amending the supplemental standards such as parking and signage requirements.

Mr. Zehner confirmed for Chair Vaughan that one of the hurdles that is keeping the Town from putting one at Town Hall is the zoning of the property; there may be others.

Mr. Zehner confirmed for Mr. Gwinn that there is a provision related to the maintenance of charging equipment.

After some further discussion, David Elder moved to recommend approval. Kristi Wright seconded, and the motion passed by unanimous roll call vote.

Report on Board of Commissioners Actions – March 3, 2021

Mr. Zehner gave a report on the Actions from the Board of Commissioner's March 3, 2021 Meeting. Of note, text amendments related to Outdoor Lighting were on the consent agenda, the public hearing for the alternative amendment related to non-conforming hotels was continued to the April 7th Board meeting, discussion related to the Fresh Pond/AEC and the Public Works master plan, a brief discussion related to the Jockey's Ridge/Soundside Rd Committee, an online flood conference which

Mayor Cahoon and David Ryan were participating in and discussion related to the Soundside Event Site.

Town Updates

Ms. Wright asked about the pump station in Nags Head pond is not working/running. Mr. Zehner stated he will get an update and get back to her.

Discussion Items

February 25, 2021 Director's Report

Mr. Zehner presented his Director's Report to the Board. This report was shared with the Commissioners at their March 3rd Meeting. The report included the P&D Monthly Report, scheduled meetings of note, and an update on the Community Rating System Recertification. Mr. Zehner noted that the Town's CRS rating will improve from a Class 6 to a Class 5 and highlighted Staff's, especially Town Planner Holly White's contributions and hard work for this rating change which will result in a total annual savings of over \$100,000 on premiums for policies in Nags Head.

Review Planning & Development Department's Work Plan

Mr. Zehner continued his discussion/review from last month on the Planning & Development and Septic Health, FY2021-2022 Strategic Work Plan. Mr. Zehner reminded the Board that that this is a status update of the Work Plan developed last year (2020); therefore, Current FY Projects pertain to projects that were active in the last fiscal year while FY21-22 Projects refers to projects intended to be active in the current fiscal year. Mr. Zehner noted that under Current FY Projects those activities that have an asterisk are expected to be completed this fiscal year.

Planning Board Members' Agenda

Mr. Elder would like the Board to look further into the maintenance of stormwater systems and tying that into the offered incentives. Mr. Zehner noted that the Board of Commissioners had talked about doing a joint workshop with the Planning Board to look at this and other Stormwater related issues further.

Ms. Harrison asked if the Town had any statistical information related to housing and the number of homes that have changed from rental to permanent residences and the number of permanent residents in Nags Head. Mr. Zehner stated that Staff has discussed this with Dare County but noted that the data is voluntary and difficult to track and probably won't be available until the end of the year. Mr. Elder suggested looking at water usage data.

Planning Board Chairman's Agenda

Chair Vaughan and Mr. Zehner briefly discussed when Town Hall will be re-opened to the public.

Adjournment

A motion to adjourn was made by David Elder. The time was 12:25 AM.

Respectfully submitted,
Lily Campos Nieberding