

**Town of Nags Head
Planning Board
January 21, 2020**

The Planning Board of the Town of Nags Head met in regular session on Tuesday, January 21, 2020 in the Board Room at the Nags Head Municipal Complex.

Deputy Planning Director Kelly Wyatt called the meeting to order at 9:00 a.m. as a quorum was present.

Members Present

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

Members Absent

None

Others Present

Kelly Wyatt, Holly White, Lily Nieberding

Election of Chair and Vice Chair for Calendar Year 2020

Ms. Wyatt opened the meeting and requested nominations for the position of Planning Board Chair for calendar year 2020. Megan Lambert moved to nominate Megan Vaughan to serve as Chairperson. David Elder seconded the motion. There being no other nominations a vote was taken, and the motion passed by unanimous vote.

Ms. Wyatt turned the meeting over to newly re-elected Chair Vaughan. Chair Vaughan welcomed new Board Members Molly Harrison and Gary Ferguson. Chair Vaughan then asked for nominations for Vice-Chair.

Meade Gwinn moved to nominate Kristi Wright as Vice Chair. Megan Lambert seconded the motion. There being no other nominations a vote was taken, and the motion passed by unanimous vote.

Approval of Agenda

There being no changes to the agenda, David Elder moved that it be approved as submitted. Kristi Wright seconded the motion and it passed by unanimous vote

Public Comment/Audience Response

None

Approval of Minutes

There being no changes, Meade Gwinn moved that the minutes from the December meeting be approved as presented. David Elder seconded the motion and it passed by unanimous vote.

Action Items

Ms. Wyatt explained that Planning Staff had recently received three text amendment requests for consideration:

1. Consideration of a text amendment to the Unified Development Ordinance submitted by Ms. Kate Creef, Assistant General Manager on behalf of Outlets Nags Head, to allow outdoor kiosks in conjunction with or as an accessory use to Retail Shopping Centers located within the C-2, General Commercial Zoning District.
2. Consideration of a text amendment to the Unified Development Ordinance submitted by Ms. April Vaughn of Whalebone Surf Shop to allow outdoor stands for the sale of produce in conjunction with or as an accessory use to General Retail within the C-2, General Commercial Zoning District.
3. Consideration of a text amendment to the Unified Development Ordinance also submitted by Ms. Vaughn to allow beer and wine sales by the glass as a permissible use in conjunction with or as an accessory use to General Retail within the C-2, General Commercial Zoning District.

Ms. Wyatt explained that while the requests are separate, there are some similarities, and because of the informal nature of the submittals, Staff believes that a larger discussion among the Board was warranted, along with a less focused review by Staff in the form of separate memorandums. Staff believes a discussion by the Board at this meeting will provide feedback that will allow the applicant to refine their requests, perhaps with Staff's assistance as necessary.

Staff is of the opinion that the requested text amendments related to outdoor kiosks at Retail Shopping Centers and outdoor stands for the sale of produce at general retail locations are interconnected and taking a holistic approach to discussing the two may be ideal. Currently, the UDO allows Outdoor Stands as an accessory use to Retail Shopping Centers and Group Developments. An Outdoor Stand is defined as "an approved area where the sale of produce, hot dogs, coffee, ice cream or Italian ice and fudge occurs from a cart or structure; supplemental standards associated with this use.

As identified, the allowance for the types of items that are permitted to be sold at Outdoor Stands has been consciously considered through the text amendment process over the years. With the request for a "kiosk", while Staff finds the operation of one to be inherently similar to that of an outdoor stand, a kiosk was not an expressed permissible use, and the intended sale/booking of events, charters, and/or tours was not permitted at outdoor stands; therefore, staff felt that an amendment to the text of the UDO was necessary.

Similarly, and not unrelated, Mrs. April Vaughn approached Staff to inquire about the ability to hold an outdoor market, with the predominate sale of produce, beneath the recently constructed covered patio area on the southern side of the retail structure located at 2214 S. Croatan Highway.

Ms. Wyatt reminded the Board that text amendments are not site specific, but rather district wide; however, for the purpose of discussion, Staff wanted to provide a visual location associated with the request.

As noted above, an "outdoor stand" for the sale of produce is allowed as an accessory use to Retail Shopping Centers, however, this particular location is not a Retail Shopping Center, but rather a stand-alone general retail business and the scope of the requested text amendment does not adhere to the supplemental standards as set forth in Section 7.76.1 noted above.

In the review and discussion, Staff suggests that the Board consider at least the following questions:

- Should there be a maximum area designated for an outdoor stand?
- Should outdoor stands continue to be considered an accessory use, or a principal use and parked independently?
- If a stand is truly an accessory use and for the convenience of the patrons of the principal use, does there need to be a minimum number of parking spaces onsite or the addition of three spaces?
- With more interest being shown in the use of food trucks, should the permissible items to be sold be broadened to include all or more types of food?
- Should the allowed sales at outdoor stands be amended to allow for booking and reservation of trips and events, making the addition of kiosks as a separate use type unnecessary, or should kiosks be added as a separate use type?
- Should amendments be expanded to address/allow outdoor (sidewalk) sales that take place seasonally or periodically at many general retail establishments? Is the outside sale of produce significantly different than the outside sale of any retail goods?

The second text amendment request submitted by Mrs. Vaughn is to amend the UDO to add the sale of beer and wine by the glass for consumption as a permissible use in conjunction with or as an accessory use to General Retail uses within the C-2, General Commercial Zoning District.

When Mrs. Vaughn originally approached the Planning Department with her questions, she explained that her vision would be to offer an area within the existing retail structure to allow patrons of the business the ability to purchase a glass of beer or wine to enhance the retail experience. Additionally, she envisions patrons of nearby establishments might also like to come into a seating area to purchase a glass of beer or wine. While Ms. Vaughn has stated that the ability to purchase beer and wine would only be during regular business hours of the principal retail use, if the ability to purchase beverages is available to outside customers, not just those patronizing the principal use, then the use should not be considered an accessory use.

In the review and discussion, Staff suggests that the Board consider at least the following questions:

- As long as appropriate licenses are obtained, should retail businesses be able to sell beer and wine by glass?
- Should this use be allowed by-right, or with a Conditional Use Permit?
- While the Town allows restaurants, the Town does not allow bars or nightclubs, or generally, establishments that sell alcohol for consumption without also selling food; is this type of use consistent with the Town's values?

Ms. Wyatt stated that she along with Ms. Creff and Mr. and Mrs. Vaughan were available to answer any questions for the Board. After receiving additional input and feedback from the Planning Board and the applicants, Staff will generate proposed text amendments for the Planning Board to review at their February meeting.

Mr. Gwinn asked why the previous Planning Board had approved outdoor stands on a per use basis? Ms. Wyatt explained that it began with (what was then) Tanger Outlet asking for a hot dog stand. The shopping center wanted to offer food service to their customers. The initial ordinance allowed hot dog carts as an accessory use to retail shopping centers. The ordinance was later amended to also allow them as part of mixed-use office/retail group development then later to also allow other types of food and beverage such as produce, coffee carts, etc.

Ms. Wyatt noted that the Board wanted to have some level of oversight and control over what was being sold and where. Not unlike food trucks, the Board was concerned about having a hot dog stand setting up shop in front or near a brick and mortar business that also sells hot dogs.

Ms. Lambert inquired about the Health Department's role and requirements when it comes to outdoor stands. Ms. Wyatt stated that a stand does require a zoning permit and part of that is having authorization from the Property Owner as well as needing approval from Dare County Health Dept in hand. Some of the Health Department requirements include having hand washing facilities and needing to be within a certain distance from restrooms, etc.

Ms. Wyatt confirmed for Ms. Lambert that while a text amendment would be district wide or use specific, the permit itself would be site specific. The permitting would be dependent on the location of the stand on-site, how much parking they have, how much lot coverage is available, etc.

Ms. Wyatt confirmed for Mr. Ferguson that the language "Customary accessory uses" is still in the ordinance and cited Austin Seafood as an example where the produce stand was permitted as a customary and accessory use to a (seafood) retail business.

Ms. Wyatt confirmed for Ms. Harrison and the Board that with regards to the beer and wine sales, the alcohol consumption is proposed for inside the store.

Ms. Wright noted that there are already existing retail shops that sell alcohol such as bait and tackle shops for example. Ms. Wyatt explained that they may be permitted under an off-premise license where the alcohol would be purchased but not consumed on-site. Ms. Wyatt also noted that tastings or free samples are regulated differently.

Ms. Wyatt stated that if the outdoor stand is approved Ms. Vaughan had expressed an interest in allowing customers to take their drink outdoors, but it would not leave the premise.

Ms. Lambert noted that in this specific scenario it sounded like a nice idea, but this would be an allowed use Town wide and inquired if there were uses where it wouldn't work.

Ms. Wyatt noted that currently most Town restaurants have a retail section so it would not be much different. Staff did discuss the idea with the Chief of Police, and he had no concerns should this proceed.

Chair Vaughan reminded the Board that the Town does not allow the sale (consumption) of alcohol on premise without also selling food so this would be a change.

Ms. Wyatt confirmed for Chair Vaughan that currently there is nothing in the ordinance that addresses outdoor informational stands. However, she stated that it could be as simple as adding "stands for the purpose of booking reservations for events" to the definition of outdoor stands rather than creating a new use category for kiosks.

Mr. Ferguson inquired if they would still need to go through this process if the kiosk was part of the larger structure rather than a stand-alone structure? Ms. Wyatt confirmed that while it might not rise to the level of a Board Review it would still require some type of review.

Ms. Wyatt confirmed for Mr. Ferguson that it would be up to the Board to decide whether the stands would only be allowed by conditional use and the applicant would need to come in and amend their conditional use permit or whether the stand could be approved administratively as allowed by the UDO.

Ms. Kate Creef from Outlets Nags Head addressed the Board. Ms. Creef was approached by a gentleman who happened to be the first hot dog vendor at the mall years ago. He had discussed the idea of a kiosk with some charter captains and the shopping center agreed that it had merit. They did not realize until he went to get his permit that it was something that was not currently allowed by the Town. They are hoping to have the stand up by May and have it up through October if it is working out. They liked the idea and felt that it would enhance their customers' shopping experience. They would like to be allowed to have two outdoor stands if possible as they have been discussing the idea of a produce stand as well. Ms. Creef also asked the Board to think about allowing food trucks or some kind of stand that sells prepared meals as this is something that is always being requested by their customers.

Ms. Creef confirmed for Ms. Wright that they were looking to locate the stand in the terrace where they currently have two rockers and a table. Initially it would just be a table with informational material and then if it does well, they might actually construct a small structure/kiosk.

Ms. Creef confirmed for Mr. Ferguson that they do have plenty of parking; their parking lot is only ever full during the holidays. Ms. Wyatt confirmed that when the Town changed the parking standard most retail places (including the Outlet Mall) gained a few extra parking spaces, so they do have some surplus parking.

April Vaughan from Whalebone Surf Shop was next to address the Board. They started exploring the idea of adding to the retail experience a few years ago and built the lanai with the idea that it would be a place for their customers to enjoy. They are looking at a small stand that would sell fruits, muffins, coffee, smoothies, etc. as well as rent out surfboards; it would just be a nice, unique outdoor space for surfers to hang out in the mornings prior to hitting the beach. Mrs. Vaughan confirmed that the lanai is attached to their building, it is not a detached structure.

Ms. Vaughan discussed the parking situation and stated that while they do not have surplus parking, a good number of their customers will park at other shops in Satterfield Landing and then walk over. Ms. Vaughan also confirmed for the Board that they are still covered under the old Satterfield Landing covenants. Ms. Wyatt noted that they may be considered an outparcel.

Ms. Vaughan then discussed their idea for the inside of the shop where they are interested in creating a new unique shopping experience. They have a lot of historical surf artifacts so they are looking at pulling it all into the upstairs mezzanine area and creating an area where people could have a beer or a glass of wine and hang out and talk surf and enjoy old surfing magazines and other such things. This would not carry over to after-hours. It would simply be available during regular store hours.

Ms. Vaughan confirmed for Chair Vaughan that they are generally open from 9 AM to 9 PM and wine/beer sales would be available starting around 3 pm.

Ms. Vaughan confirmed that they do have two bathrooms, one of which is handicap accessible.

Ms. Wyatt explained for the Board that the Satterfield Landing shopping center may have been developed under one scheme but there are separate parcels, not unlike the Outer Banks Mall. Ms. Wyatt stated she would need to research it further.

Ms. Wyatt confirmed that currently the lanai is not considered customer service area, so parking was not a consideration at the time of construction. Ms. Wyatt confirmed that it was approved administratively no different than a porch extension.

Ms. Wyatt confirmed for Ms. Harrison that if it were to become a more permanent retail space, they would consider that an additional customer service area and that would change the parking.

The Board agreed that parking will definitely need to be looked at more closely. Ms. Wyatt suggested that they could look at the percentage of principal vs. accessory use and park accordingly.

Mr. Ferguson stated that they could look into a shared parking agreement if they are not considered part of the Satterfield Landing Shopping Center. Ms. Wyatt stated that shared parking agreements are permitted via the Conditional Use process so if they got to a point where that was a possibility, they would need to come back in front of the Planning Board and Board of Commissioners.

Mr. Gwinn stated that if they were to approve Ms. Vaughan's second request and allow the sale of beer and wine, they would have customers staying longer and parking longer, especially if it becomes a popular gathering spot and people begin to congregate there.

Ms. Lambert agreed stating that while the idea sounds good, because it would be town wide, they need to make sure that it is planned appropriately.

Chair Vaughan asked the applicants to continue to work closely with Staff so that the Board knows exactly what they are requesting. She felt that it was a "good idea" and it's good for Nags Head to be open minded about having non-traditional retail environments or mixed uses. The comprehensive plan encourages the Town to not be rigid.

Mr. Elder suggested that they throw food trucks into the discussion. Mr. Elder also stated that a scaling plan would help him better understand how it would work.

Ms. Lambert agreed stating that they need more specifics on parking, use and items being served. Ms. Lambert also suggested that they discuss food preparation and whether they would be selling prepared food vs. non-prepared. Ms. Wyatt agreed that this is a conversation Staff need to have with Mr. and Mrs. Vaughan and Dare County Health as there are specific regulations related to this matter.

Chair Vaughan also reiterated that she feels that allowing beer and wine without food is a big move for the Town and should be discussed further.

Ms. Wyatt stated that she felt she already had more information than she had going into the meeting, especially from Ms. Creef and that staff would meet with Mrs. Vaughan to get more detailed information.

Report of Board of Commissioners Actions

Ms. Wyatt provided the Board with a brief update from the January 8th BOC meeting. Of particular note, it was Board consensus to meet with the Planning Board on Tuesday, February 18th at 9 am for a joint workshop to discuss the Flood Damage Prevention Ordinance. Mayor Cahoon asked for as much information as possible ahead of time. Mr. Zehner stated that the draft ordinance is expected to be ready by the end of January which will be provided to Board members.

Town Updates

None

Discussion Items

Ms. Wyatt explained that at the Planning Board's December 17, 2019 meeting, it was brought to the Board's attention by Planning Board member David Elder that the Town of Kill Devil Hills had requested that the North Carolina Code Officials look at State Building codes and review the definition of "Single-Family Dwellings" vs. large "Event" Homes/"mini hotels". Mr. Elder noted that of particular concern is the ability for emergency responders to access these types of structures. Staff noted they would continue to review the subject and provide information to the Board at their January 2020 meeting.

Within the Town of Nags Head "Large Residential Dwellings" are defined as a single-family dwelling or two-family dwelling (duplex) that has 3,500 or more square feet of enclosed habitable living space. Staff's memorandum, dated January 17, 2020 reviews in detail the regulations that apply to "Large Residential Dwellings".

In January 2019 the Town of Duck adopted an ordinance to establish standards for the scale of residential development. While the Town of Nags Head prohibits homes with enclosed habitable space above 5,000 sf regardless of lot size (except in the SED-80 District), the Town of Duck does permit homes larger than 5,000 of enclosed living space, however, the permissible area is tied to the area of the lot.

Ms. Wyatt noted that the Town of Duck does have a "Wedding Event Registration Policy". In short, this registration is for wedding-related gatherings with 50 or more attendees in a private residence in the Town of Duck. These events must be registered with the Town of Duck Department of Community Development at least thirty (30) days prior to the event date. The registration will provide information for notification of property owners, neighborhood associations, and public safety personnel and will also provide contact information for the responsible parties who could be contacted during the event if necessary.

The Town of Southern Shores defines a "Large Home Dwelling" as any residential structure exceeding the maximum size, maximum transient occupancy capacity or maximum septic capacity for such structures in the zoning district in which it is located. Large home dwellings are not a permitted use in any zoning district.

Ms. Wyatt reminded the Board that the Town of Southern Shores recently considered a zoning ordinance amendment which would have imposed regulations on the use of single-family dwellings for special events.

A copy of the draft ordinance was included in the Staff memorandum however, this ordinance was not adopted. It is noted that the purpose of the drafted revisions was to ensure that special events take into account and are managed such that the public health, safety or welfare of the citizens and visitors to the Town who attend those events or live in the vicinity of the events are taken into account. The draft ordinance required that a free of charge permit be sought for any event expected to have more seventy-five (75) attendees.

In summary, reviewing the allowances of other nearby towns, the Town of Nags Head currently has the most restrictive regulations on permissible living area for large residential dwellings, however, there may be some merit to discussing certain aspects of regulating special events within the Town. While the ordinance drafted by the Town of Southern Shores was very extensive, it may provide some discussion points for the Planning Board in moving forward with regulations if so desired.

Mr. Ferguson inquired if there have been problems with large homes in Nags Head. Ms. Wyatt confirmed that the Town has seen impacts from large single-family development, with parking being the biggest issue along with trash, noise and septic issues. Chair Vaughan agreed that yes there have been impacts.

Mr. Elder noted that one the issues he brought up was the impacts on parking which in turn impact emergency access. His concern, especially during times of increase traffic is the level of risk placed on first responders during an emergency.

Ms. Lambert spoke about her own personal experience staying at one of the larger homes in Southern Shores, being on the top floor and realizing the lack of egress in case of an emergency such as a fire. The cars were stacked in the driveway which would have made it difficult for emergency personnel to respond.

Mr. Elder stated that it's an even bigger issue any time there is a wedding or event at one of these homes. In those cases, there may be even more people sleeping there after a fun event. It's when a house is pushed to capacity or over capacity that things tend to happen. "If it's foreseeable it's preventable."

Ms. Harrison agreed stating that during events parking overflows even into the beach accesses. It happens all the time.

Mr. Elder likes the idea of having a registration for these types of events so at least there is someone to call in case of an emergency.

Chair Vaughan noted that some of these homes are not new anymore and there is no inspection process so there's more of a possibility of dangerous conditions developing, such as a deck collapse.

Ms. Wright is often at weddings and sees these issues all the time, especially as they relate to parking.

Mr. Elder wondered if it would make sense for there to be some type of free registration, is this something the Board would support?

Chair Vaughan confirmed for Mr. Gwinn that this is an issue that is very difficult for the rental companies to control. People have weddings even in smaller homes.

Ms. Lambert noted that this is similar to the reason the Town now has registration for the short-term rentals, so that the Town has someone to call if any issues arise.

Chair Vaughan noted that there could be better or more communication with the real estate companies especially as it relates to anything advertised as an event home, but reiterated that it is difficult to control. Mr. Gwinn agreed stating that the only thing they can control is the information.

The Board discussed the possibility of registering events and what that process would look like and what would trigger the registration.

Mr. Ferguson stated that he was concerned about the enforcement aspect, especially regulating parking during an event. The Board discussed what enforcement might look like and who would be responsible for the enforcement. The Board agreed they don't want to be the party police.

Ms. Wyatt stated that it sounds like the Board is interested in maybe pursuing something like what the Town of Duck is doing.

Ms. Harrison noted, and the Board agreed, that over occupancy and over taxing septic systems can cause health concerns that could be just as serious.

The Board agreed that they would like to pursue this issue further as well as see if this is something the Board of Commissioners would support. Staff will also work with Police and Fire to let them know that the Board is discussing this issue and to get their input.

Mr. Ferguson suggested that Staff come up with a skeleton ordinance to present to the other departments and the Commissioners.

Planning Board Members' Agenda

None

Planning Board Chairman's Agenda

None

Adjournment

There being no further business to discuss, a motion to adjourn was made by David Elder. The time was 11:02 AM.

Respectfully submitted,

Lily Campos Nieberding