

**Town of Nags Head
Planning Board
December 14, 2021**

The Planning Board of the Town of Nags Head met on Tuesday December 14, 2021, in the Board Room at the Nags Head Municipal Complex.

Planning Board Chair Megan Vaughan called the meeting to order at 9:03 a.m. as a quorum was present.

Members Present

Megan Vaughan, Meade Gwinn, David Elder, Gary Ferguson, Megan Lambert

Members Absent

Kristi Wright, Molly Harrison

Others Present

Kelly Wyatt, Holly White, Lily Nieberding

Approval of Agenda

David Elder moved to approve the agenda. Meade Gwinn seconded and the motion passed by unanimous vote

Public Comment/Audience Response

None

Approval of Minutes

Chair Vaughan asked for a motion to approve the minutes of the November 16, 2021, meeting. Meade Gwinn moved to approve the minutes as presented; David Elder seconded, and the motion passed unanimously.

Action Items

Consideration of a Site Plan submitted by Webb and Dorie Fuller for removal of trees with a caliper of 16-inches or greater as required within the SED-80, Special Environmental District. The property is located at 452 W. Villa Dunes Drive, Nags Head.

Planning Director Kelly Wyatt presented an SED-80 Site Plan Review submitted by applicants J. Webb and Dorothy Fuller for the purpose of requesting approval for the removal of twelve (12) trees that exceed a 16-inch caliper within the SED-80, Special Environmental District. The property is located at 452 W. Villa Dunes Drive and the existing Land Use is Single Family Dwelling. The property is split zoned between the SED-80, Special Environmental District & SPD-20, Special Planned Development District; the Roanoke Sound borders the property to the west.

Ms. Wyatt noted that the majority of the property is in an X Flood Zone except for a small portion that is AE-5 immediately adjacent to the Sound. The 2017 Comprehensive Land Use Plan designates this property as Conservation. As such there is a need to preserve as much of the area as they can, the land, trees, topography. Town Code does allow for removal of trees in this area but requires both Staff and Board review.

The lot in question is approximately 2.8 acres in area, with approximately 140' of frontage along the Roanoke Sound. Ms. Wyatt explained that the applicant is seeking to construct an accessory structure (pool and pool surrounds) in the southwest corner of the property. Currently, the applicants is requesting approval of the removal of trees within the footprint of, and within a five-foot perimeter of, the proposed accessory structure as well as other trees on the property which are within the vicinity of the existing principal structure and vehicular access areas that pose a safety hazard.

Ms. Wyatt presented a site plan of the property denoting a total of 23 trees that have been identified for removal and meet the code requirements for removal. Of the 23 trees, 12 of them are greater than 16-inches in caliper and require Board review and approval.

Ms. Wyatt noted that there is one tree that has been identified as being 16-inches or greater in caliper, located on the northern property boundary between the applicants and their adjoining neighbor (Ralph Buxton). Staff is in receipt of written authorization from Mr. Buxton for the removal of this specific tree.

Staff spelled out the standards for review and approval of the request in detail in their staff memorandum. Staff would submit that the proposed building site for the accessory structure is a suitable location given existing site conditions of the property. Based upon a review of the application, staff inspection and analysis of the property, and would recommend approval of the Site Plan as presented, allowing for the removal of the twelve (12) trees greater than sixteen inches in caliper.

Ms. Wyatt noted that she, as well as one of the applicants, Dorie Fuller were available to answer any questions for the Board.

Mrs. Fuller confirmed for Mr. Gwinn that there are many trees on the property that will not be touched.

Mrs. Fuller confirmed for Chair Vaughan that the CAMA setback and the septic tank prevented the location of the pool elsewhere on property.

Mr. Gwinn stated that he was good with the request.

Gary Ferguson moved to recommend approval based on what was presented and staff's recommendation. Meade Gwinn seconded, and the motion passed by unanimous vote.

Sketch Plan Review submitted by Michael Robinson, P.E., P.L.S. on behalf of Blue Moon Five, LLC for the construction of an approximately 8,676 square foot, two-story restaurant. The property is zoned C-2, General Commercial and is located at 4329 S. Croatan Highway, Nags Head.

Ms. Wyatt presented a Sketch Plan Review package submitted by Michael Robinson, P.E., P.L.S on behalf of Blue Moon Five, LLC. The project consists of the construction of a two-story, 8,676 square foot restaurant, along with the necessary site improvements. This property is zoned C-2, General Commercial and a Sit-Down Restaurant is a permitted use and subject to the supplemental standards required by Section 7.31, Supplemental Regulations, of the Unified Development Ordinance.

Pursuant to Section 4.3, Pre-Application Meeting and Sketch Plan, of the Unified Development Ordinance, a sketch plan review is mandatory for all new development other than one- and two-family dwellings, in cases where new construction and/or additions have a total habitable building area that is 5,000 square feet or greater. Documentation is not required to be as complete as the formal review and applicants are encouraged to provide more than one project alternative or variations of the proposed project for review." The applicant is encouraged to incorporate the recommendations of the UDO Administrator and/or the Planning Board (if applicable) into the development plan before submittal of the formal site plan.

Ms. Wyatt noted that that this submission provides significantly more detail than is required by the Sketch Plan Review. The applicant acknowledges this and has noted that the configuration of the plan was largely driven by the wastewater system and the related soil conditions and setbacks. Until the wastewater design was complete, the applicant could not be certain that the other elements of the site wouldn't change, including the building size and drive aisle and parking configurations. For this reason, much of the site design had to be considered in conjunction with the wastewater approval, resulting in a more complete preliminary site plan for the Board's consideration.

Staff did send the plan out for review by the members of the Technical Committee though it did not go through a formal TRC review. At this time, the Planning Department, Town Engineer and Public Works Director have provided comments on the sketch plan package to the applicant and his engineer and architect.

Ms. Wyatt proceeded to review the relevant comments for the Board; these were also included as part of the Staff memorandum. Ms. Wyatt noted while they did not yet have comments from Building Inspections, as soon as she gets them, they will be provided to the applicant.

Ms. Wyatt noted that in her review of the sketch plan she did not find anything problematic but wanted to give the Board a chance to review and discuss the project. Ms. Wyatt noted that she as well as Engineer Mike Robinson and Architect Ben Cahoon were available to answer any questions.

Architect Ben Cahoon presented the sketch plan to the Board and discussed the logic of the layout of plan. Mr. Cahoon noted that is it a corner lot which presents both difficulties and opportunities for a restaurant site. They wanted to orient the building to have pleasant facades from the street sides and mask the view of the backside of the building. Mr. Cahoon touched on some of the design elements which include a wrap-around porch and a fenced service area and discussed Stormwater measures, the Wastewater system (which will allow the restaurant to have a nice fenced in lawn area for outdoor service) as well as parking. Mr. Cahoon noted that the applicant wanted to make sure that there was sufficient parking for their employees.

Mr. Cahoon confirmed for Chair Vaughan that there is no street parking allowed on Dove Street.

Mr. Cahoon confirmed for Mr. Gwinn that there is no living area being proposed, the second floor is additional customer service area; it is considered a one-story building with a mezzanine level.

Mr. Cahoon confirmed for Chair Vaughan that the private upstairs dining area is included in the total customer service area. Mr. Cahoon confirmed that the proposed septic allows for 25 bar seats.

Mr. Cahoon clarified for Mr. Ferguson that while septic is based on number of seats; parking is based on customer service area.

Mr. Ferguson wanted to ensure that they have the adequate parking for that use. Mr. Ferguson noted that he was glad that they are using Dove Street and not a curb cut on US 158.

Mr. Cahoon confirmed for Mr. Ferguson that they have plans to use the repair area (which will be fenced) for outdoor seating.

Mr. Elder noted the importance of (outdoor) lighting for the site and Mr. Cahoon discussed some of his ideas.

Engineer Mike Robinson addressed Town Engineer Dave Ryan's comment related to the westernmost entrance. Mr. Robinson feels that a larger entrance would be excessive for that use, and they would lose parking if they increased it. Mr. Robinson noted that parking would still be compliant, but the owner really wanted to make sure there was ample parking on the site. Mr. Robinson stated he will have a conversation with Mr. Ryan to discuss this issue further.

Ms. Wyatt confirmed for Mr. Ferguson that they are required to have 46 parking spots but are currently proposing 55 spaces.

Ms. Wyatt confirmed for the Board that the site is architecturally compliant. Ms. Wyatt noted that she will forward any additional comments from Mr. Ryan to the Board as soon as Mr. Robinson has had a chance to speak with him. Ms. Wyatt also confirmed that they couldn't move the driveway any further west; any expansion would have to go east.

Conduct the Stakeholder Interview of the Planning Board for the Electric Vehicle Action Plan

Chair Vaughan noted that due to a scheduling conflict with the students from Duke, Staff is requesting that the interview be rescheduled to the January 18, 2022 meeting.

Meade Gwinn moved to continue the interview to the January meeting; David Elder seconded, and the motion passed by unanimous vote

Ms. Wyatt asked the Board Chair to approve an agenda change and move one of the discussion items (H2. Update on Resilient Coastal Communities Program) up on the agenda due to a timing issue. Chair Vaughan and the Board agreed.

Recess

The Board took a brief recess to prepare for a Zoom presentation. The time was 9:58 AM. The Board reconvened at 10:10 AM

Discussion Items

Update on Resilient Coastal Communities Program.

Principal Planner Holly White explained that earlier in the year, the Town was notified that it was accepted into the North Carolina Resilient Coastal Communities Program, a technical assistance program under the Division of Coastal Management that endeavors to "allow communities to develop an in-depth understanding of their risk to coastal hazards. As a result, communities will be better prepared to take advantage of various future implementation funding opportunities."

Ms. White explained that VHB (Vanasse Hangen Brustlin, Inc.) had been assigned as the Town's consultant under this Program.

In Ms. White's staff memorandum, she noted that the Town's efforts under the development of the VCAPS Report, Comprehensive Plan, and Hazard Mitigation Plan have been recognized as satisfying many of the initial requirements of the program.

Ms. White then introduced Candice Andre, Senior Project Manager with VHB, who gave the Planning Board an overview of the program via a Zoom Presentation. Ms. Andre's presentation included an overview of her organization, more details about the N.C. Resilient Coastal Communities Program and its objectives; where the Town is in the process (goals, deliverables, community engagement, etc.) and discussed next steps. Ms. Andre noted that it is a Four-phase program, and that the Town (of Nags Head) is close to completing Phase II due to all the work that had already been done. Participating in the Resilient Coastal Communities Program positions the Town for future project implementation funding in Phases 3 and 4 of the Program.

Ms. Andre also discussed the importance of having a Community Action Team and the need for Planning Board participation. The Board responded favorably to this request. Ms. Andre stated she would be happy to share with the Board what other local Action Teams are doing, including Best Practices.

Ms. White noted that this will be a fairly quick process and will be providing the Board more information at their next meeting.

VHB is supporting Town of Nags Head and Town of Duck but there are other contractors supporting Dare County and others. Ms. Andre stated that all the contractors/consultants get together as a group to exchange ideas.

Report on Board of Commissioners Actions – November 3, 2021

Ms. Wyatt gave an update on the Board of Commissioner Actions, of note:

The Board announced the Earl Murray Jr Employee of the Year winner as Admin Services Water Billing Specialist Brittany Phillips.

The Consent Agenda was approved and included a request for Public Hearing to consider amendments to the Residential Stormwater Ordinance – Ms. Wyatt noted that this item will be coming back to the Planning Board in January and will be heard by the BOC in February.

A Public Hearing was held to consider a text amendment submitted by Jay Overton as it pertains to alternative site design standards within the Soundside Residential Overlay District. The Board passed a motion (4 – 1) to adopt the text amendment as presented. In addition, there was a statement approving the amendment that noted that the declaration of approval was also deemed an amendment to the Comprehensive Plan. Changes in the conditions that the Board considered in amending the UDO were: an overwhelming preference for natural grading, interest in minimizing structural features like bulkheading, accommodating extraordinary conditions for a limited number of lots with extreme elevation changes, and that a more natural approach to landscaping and grading of lots in addition to the ability to control stormwater was reasonable and in the public interest. It was Board consensus that staff develop a Special Use Permit process to bring back through the Planning Board and to the Board of Commissioners, consistent with the Board's earlier discussions.

Finally, Ms. Wyatt presented some highlighted items from her Director's Report: The Board congratulated staff on the improved Community Rating Service of Class 5 which they asked to be advertised in a public service announcement to include the importance of maintaining flood insurance; the Board requested that Staff make sure that the tree preservation ordinance has legal counsel involvement and includes information re: why the Town has an ordinance limiting tree removal in certain districts; Staff was thanked for the planning and preparation done for the very successful Dowdy Park markets.

Town Updates

Chair Vaughan inquired about Gray Eagle St. Ms. Wyatt noted that Public Works Director Eric Claussen and Town Manager Andy Garman had met with NC DOT and provided some information regarding traffic calming measures. After some further discussion it was decided that Ms. Wyatt will invite Mr. Claussen to a future Planning Board meeting to discuss that as well as other Public Works items.

Discussion Items (Continued)

November 22nd, 2021, Director's Report

Ms. Wyatt presented the Director's Report to the Board. Of note: an outline of meeting that Staff has been attending; review of Residential Stormwater Regulations; Tree Preservation Ordinance; CRS update; an update on upcoming Planning Board items; an update on the Decentralized Wastewater Management Plan; Estuarine Shoreline Management Plan – the Advisory Committee will hold their first meeting tomorrow; NC Resilient Coastal Communities Program (discussed earlier); NC AIA Activate Technical Assistance; Dominion LED Conversion and an update on Dowdy Park event.

Chair Vaughan and the Board discussed the need to be cognizant of the scheduling of events/coordination with other events happening around town.

Discussion of the use of shipping containers as dwellings.

Ms. Wyatt explained that it had recently come to staff's attention that the Unified Development Ordinance (UDO) does not contemplate the use of shipping containers as a principal use and more specifically, as a residential dwelling (i.e.: container home). Currently the UDO discusses shipping containers for use as Accessory Structures, post-storm for storage but not for anything else.

Ms. Wyatt reminded the Board of recent legislation that states if something (a use) is not expressly prohibited then it's likely permitted.

Ms. Wyatt confirmed for Mr. Gwinn that someone had reached out to Staff inquiring about containers and whether they were allowed to be used for this purpose within the Town.

Understanding that there is a growing interest in repurposing/retrofitting shipping containers for both residential and commercial purposes, staff would request that the Planning Board initiate a text amendment for the purpose of having staff research and provide additional feedback and recommendation on how to address and/or regulate these types of structures.

Chief Building Inspector, Cory Tate has noted that the NC Building Code does not prohibit the use of shipping containers as dwellings and that they would be permissible when constructed under the supervision of a licensed NC structural engineer. The container would have to be modified to meet

the provisions of the NC Building Code, including the technical codes for plumbing, HVAC, electrical and energy conservation.

In addition, staff posed the question on the use of shipping containers as principal residential dwellings to the North Carolina Planners Listserv. There were few responses but the majority of those received was that their municipality does not prohibit shipping containers as dwellings. However, because they must be retrofitted to meet the residential building code, and they are considered non-traditional construction, requiring that an engineer design the necessary modifications to meet those codes and then make the required modifications, it typically becomes cost prohibitive.

Ms. Wyatt noted that the City of Wilmington does permit the use of shipping containers and has permitted them in both residential and commercial venues. In fact, the City of Wilmington has a Cargo District and Ms. Wyatt shared a link with Board where they can go to learn more.

Lastly, in considering this use, Ms. Wyatt reminded the Board that NC state statutes prohibit the imposition of design restrictions for single and two-family dwellings, therefore, if allowed, architectural design criteria could not be required.

Ms. Wyatt confirmed for Ms. Lambert that if someone were to apply to convert a shipping container into a principal structure and they met NC Building Code and other requirements it would be permitted because it is not expressly prohibited. If the Town were to then prohibit it via a text amendment, then it would be considered non-conforming.

Ms. Wyatt confirmed for Mr. Ferguson that NC legislature changed several years ago so the language in the Town Code had to change to state that if it's not expressly prohibited, it is permitted unless the use is very similar to another use that is prohibited.

Mr. Ferguson feels that they will need to allow shipping containers as residential structures, if they meet NC Building Code. Mr. Ferguson does not believe they can prohibit them.

Ms. Wyatt stated that Town Attorney Ben Gallop will be reviewing this item if the Planning Board initiates the text amendment.

Ms. Wyatt confirmed for Chair Vaughan that someone could not place a shipping container on a lot (vacant or otherwise) without some type of permit.

After some further discussion the Planning Board reached consensus to initiate the text amendment regarding the allowance of shipping containers as residential dwellings within the Town. Planning staff anticipates having more information for the Planning Board's consideration at their January 18, 2022 meeting.

Planning Board Members' Agenda

Mr. Elder suggested having a list of permitted Short-Term Rentals on a map on the Town website to make it easier for the Public to access this information.

Ms. Lambert and the Board agreed that they would like to revisit the Accessory Dwelling Units (ADUs) discussion and learn more about the idea of a Deed of Restriction.

The Board and Staff discussed the proposed Epstein Beach Bathhouse.

Mr. Ferguson discussed, and the Board agreed that they would like to be updated on Board of Adjustment decisions. Ms. Wyatt stated that she will add this as an item in her Director's Report.

Mr. Ferguson and the Board discussed the idea of having a Planning Board member or members attend the APA Planning Conference.

Mr. Gwinn discussed getting some updated demographic information.

Planning Board Chairman's Agenda

Chair Vaughan congratulated Ms. Wyatt on her promotion to Planning Director and thanked staff for all their work throughout the year. Chair Vaughan also reminded the Board that in January they will be re-electing the Chair and Vice Chair.

Adjournment

A motion to adjourn was made by Megan Lambert. The time was 11:42 AM.

Respectfully submitted,
Lily Campos Nieberding